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A MANUAL OF THE LAW

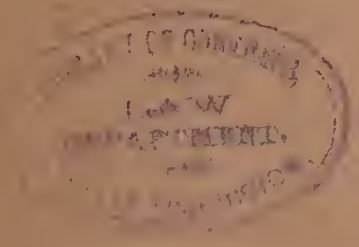
OF

ROADS AND HIGHWAYS

IN THE

STATE OF KANSAS.

WITH FORMS AND RECORD ENTRIES.



NINTH EDITION.

By G. C. CLEMENS.

REVISED BY THE AUTHOR.

CRANE & COMPANY, PUBLISHERS,
TOPEKA, KANSAS.
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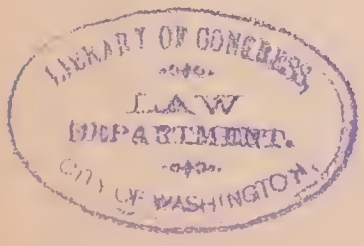

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PREFACE TO THE NINTH EDITION.

When, twenty years ago, I put forth this manual, the Road Law was but ten years old; the Supreme Court had interpreted but little of it, and in advising my readers I had often to tread untrodden paths. The book has since been several times revised by other hands. This is my second revision; and coming back now to my original text, which revisers have left untouched, I am gratified, as well as astonished, that I find so little to change of what I wrote eighteen years ago. I have, however, brought the book fully up to date, and I think I may say with confidence that all our statutory law concerning highways is to be found in this book. To the officers who have had to wait for this revision with what patience they were willing to manifest, I offer the single excuse that I am unwilling to have anything of the kind go out in my name that I am not satisfied is accurate and complete.

The Road Law would not be chosen as a desirable literary theme, but I believe I have become known to more people in Kansas through this unexciting manual than I could have become known to through the most thrilling romance. So this humble labor has its compensations.

G. C. CLEMENS.

Topeka, Kansas, July 15, 1905.

PART I.

INTERPRETATION OF ROAD LAWS.—COLLATED ROAD STATUTES.

CONTENTS.

PART I.

INTERPRETATION OF ROAD LAWS:

What the Petitioners must Do 9
What the Commissioners are to Do 15
What the County Clerk is to Do 20
What the Viewers are to Do 21
What the Land-Owner is to Do 34
What the Road Overseer is to Do 36
How to Contest a Road 43
Abandonment of Roads 49

COLLATED ROAD STATUTES 50

PART II.

FORMS AND RECORD ENTRIES 85

INTERPRETATION OF ROAD LAWS.*

I.

WHAT THE PETITIONERS MUST DO.

THE PETITION.

Although power "to lay out, alter or discontinue any road" is given to the county commissioners in general terms (Gen. Stat. 1901, sec. 1621, subdivision 8), they have no authority to lay out, alter, nor vacate any road, unless a petition is presented to them by twelve householders of the county residing in the vicinity of the proposed road. The board cannot act in the matter of its own motion. (18 Kas. Rep. 386–396; 50 Kas. Rep. 635.) A householder is a person of full age, owning or occupying a house as a place of residence, and not as a boarder or lodger. (Gen. Stat. 1901, sec. 7342, subdivision 25.) In short, a householder is an adult person, who keeps house as master or mistress of the house. One needs not to be married in order to be a householder (4 Kas. Rep. 120); and a single woman may be one as well as a man. The petition must describe the proposed road "with sufficient certainty to enable a practical surveyor to run it." (59 Ind. Rep. 54; 73 Ind. Rep. 454.) "The description of a highway embraces its beginning, course, and termination. If in any of these particulars it is so uncertain that a practical surveyor cannot place it, the entire road fails." (73 Ind. Rep. 455.) The county commissioners have no power to lay out the road unless it will be of public utility (section 6), and hence the petition should aver that the proposed road will be so. Printed petitions, with blanks for the descriptions, etc., can usually be had of the county clerk. The proper form for a petition is given in the latter part of this book. (See FORMS AND RECORD ENTRIES.)

It must appear in some way that the petitioners, or at least twelve of them, are householders, for this fact is jurisdictional and should

*When not otherwise indicated, the references are to the sections following the heading, "COLLATED ROAD STATUTES."

somewhere in the record be shown to exist before a view is ordered. If the record does not show this fact, the proceedings are void on their face if attacked by petition in error. (18 Kas. Rep. 132, 398.) But if the petition shows upon its face that twelve householders of the county are signers, the record will be good if it shows simply that the board made a finding "that the law had been substantially complied with." (44 Kas. Rep. 558.) It need not state that any evidence was offered that the petitioners were householders. (Id.) Let it not be forgotten, however, that the fact itself must exist, or its non-existence may be proved and the order establishing the road be declared void.

THE BOND.*

One or more of the petitioners must give a bond, with sureties, to secure the expenses of the view, and this bond must be presented to the commissioners with the petition. (Section 1.) If the road shall be established by the commissioners, the county will pay all the expense, and this bond will then amount to nothing; but if the commissioners decide against the proposed road, then the bondsmen will have to pay the expenses of the proceedings, or be sued upon the bond. (Sections 1 and 6.) These expenses will amount to between ten and eighteen dollars a day during the time the viewers or commissioners are actually engaged in making the view, and there may be some other small items of expense. (See section 18.) A printed bond, with proper blanks, may be usually had of the county clerk. A form for it is given in the latter part of this book.

PRESENTING PETITION.

At the next regular session of the county commissioners, the petition and bond should be presented to the board. If the board finds that the petition is signed by proper parties, householders, and enough of them — twelve, — and that the proposed road is so described that a practical surveyor could take the description and run it, and that the bond is good and in proper form, they will make an order appointing viewers, or deciding that the commissioners themselves shall act as viewers, and directing the county clerk to give notice of the petition and view. (See "WHAT THE COUNTY COMMISSIONERS ARE TO DO, AND WHAT THE COUNTY CLERK IS TO DO.")

*Such a bond may now be given with a surety company as surety (Laws 1903, ch. 489); so that one's neighbors need not be asked to incur uncertain liabilities.

NOTICE TO LAND-OWNERS.

At least six days before the time for the viewers to meet, the petitioners, or the principal petitioner, must serve notice of the time and place of the meeting of the commissioners or the viewers upon every owner of lands through which the road will run, who lives anywhere in the county, or has an agent living anywhere in the county; or if any of the lands are owned by a minor, an idiot, or an insane person, the notice must be served on that person's guardian, if there be a guardian living in the county. An "agent" means, in this statute, one who has authority to act *in such matters*,—not merely an agent for *any* purpose. (26 Kas. Rep. 509.) If a land-owner does not live in the county, and has no agent living in the county and authorized to attend to such matters, no notice is to be served on him; and if a minor, an idiot, or an insane person has no guardian living in the county, no notice can be legally served upon such person. The object of this notice is to enable the land-owner to apply to the viewers, or to the commissioners when acting as viewers, for the assessment of damages. (12 Kas. Rep. 531, 533.) But if a land-owner presents to the board of county commissioners a claim for damages to his land, want of notice to him is cured, and he cannot object to the road on that ground. (33 Kas. 34; 36 Kas. 664; 47 Kas. 402.)

WHO IS A LAND-OWNER.

The term land-owner in these proceedings has a wide meaning, and does not include merely the actual owner of the *title* to land, nor one who owns *the land* itself; but includes every person having any rights connected with the land, and which may be affected by the location of the road through it. Thus, a tenant may have a nursery upon the very land the road will take; and he would be a "land-owner" upon whom notice must be served. If there are several owners, as heirs, notice should be given to each. Notice should be given to *both* landlord and tenant. (49 Iowa Rep. 569.) The party giving a mortgage is still the owner—the mortgagee is not. (47 Kas. 355.) If a lawsuit is going on between two claimants of the land, *both* should have notice; and if the land should be in possession of a receiver, he should have notice. In short, the *safe* course will be for the petitioners to give notice to every one appearing to have any kind of interest in the land, leaving the viewers or commissioners to settle the question of right. A form for this notice

is given in the FORMS AND RECORD ENTRIES. The principal petitioner must also give the surveyor six days' notice.

RELOCATING ROAD.

If the true line of an established or public road has become doubtful or uncertain — the monuments or marked trees removed, for instance — it may be resurveyed under the direction of viewers, or, at their discretion, of the county commissioners acting as a board of viewers. But in such case, it is the old road that is to *be found* — the very road laid out — and the purpose is not to construe nor to correct the old survey. (20 Ohio State Rep. 180.)

A petition signed by twelve householders is as necessary as in proceedings for laying out a new road, and unless such a petition is presented, the whole proceeding for relocation will be void; for without such a petition the board of county commissioners has no power whatever to act. (34 Kas. Rep. 595.) But if the object is nothing more than to merely relocate the old road — not to alter it in any way; if the old road, *just as it was laid out*, is to be merely found and marked again, it will not be necessary to give notice to land-owners as if it were a proceeding to lay out a new road. (22 Ohio St. Rep. 180; 34 Kas. Rep. 595.) If anything more than this is intended, however, then notice of the view should be published and notices should be served on the land-owners precisely as in other proceedings. (34 Kas. Rep. 595–603.) If the reader will refer to "WHAT THE ROAD OVERSEER IS TO DO," he will perceive how important relocation proceedings may become, and how often they may become necessary in a prairie country.

A proceeding to relocate will not be barred by a previous refusal of the county board to establish a new road over the same line as if no road had ever been established there. (103 Indiana Rep. 48.)

ROAD ON COUNTY OR CITY LINE.

When a road is to be established on or along a county or city line, the proceedings are somewhat similar to those in other cases; the main difference consists in the joint action of the two boards and the two sets of viewers. (Sections 9, 10.)

APPEAL FROM COUNTY COMISSIONERS.

A land-owner may appeal from the decision of the county board, and he may take his appeal under either section 1640 or section 6022 of the General Statutes of 1901, sec. 7 of Collated Road

Statutes in this Manual. (18 Kas. Rep. 575.) But the appeal will not, in either case, bring before the district court the question of public utility, for that is an administrative, not a judicial, question. Only the question of the land-owner's damages will be open on the appeal. (42 Kas. Rep. 534; 34 Alabama Rep. 461–464; 6 Indiana Rep. 237.)

Of course, if the county board refuses a petition arbitrarily, and without exercising fair, honest judgment, the district court can furnish the petitioners a remedy. (Last clause of section 1923, Gen. Stat. 1901.) But an appeal to a jury in a district court upon this question of *discretion* was certainly not contemplated by the legislature. Neither, it has been held, can this question be determined upon a petition in error. (3 Mass. Rep. 406; 9 Gray [Mass.] Rep. 57; 6 Cushing's [Mass.] Rep. 306; 10 Mo. Rep. 679.)

In awarding damages for the location of a county-line road, each board of county commissioners of the counties between which it is to be laid out acts separately; and an appeal from the award made by either board must be taken within thirty days after the order appealed from, regardless of when final action is taken by the other board. (45 Kas. Rep. 442.)

PETITION IN ERROR.

Another way to have the proceedings reviewed by the district court is by a "petition in error," which will be fully enough explained under the head, "How to Contest a Road;" for this proceeding may be used by either party.

Whenever either an appeal or a proceeding in error is to be taken, the petitioners should at once consult counsel; for non-professional men can very easily make fatal mistakes in such proceedings.

HOW THE NOTICE IS TO BE SERVED.

The statute does not provide *how* the notice shall be served, and hence, it must be handed to the party personally; it cannot be left at his usual place of residence. (6 Rhode Island Rep. 255, 259; 1 Curtis's U. S. Circuit Ct. Rep. 437; 18 Barbour's N. Y. Rep. 393; 25 Barbour's Rep. 636, 646; 2 Jones's [N. C.] Law Rep. 52; Wade on the Law of Notice, §§ 1334–1342.) Of course, if the land-owner appears before the viewers or the commissioners when acting as viewers, and claims his damages, it will be immaterial how the notice was served on him or whether it was served at all; for his appear-

ance waives all objections of that kind; (25 Kas. Rep. 517, 518;) and if he afterwards files with the county board his claim for damages, that is a waiver of all defects in the notice. (33 Kas. Rep. 34; 36 Kas. Rep. 664; 47 Kas. Rep. 402.) But as it cannot be certainly known in advance that he will appear and waive objections, prudence requires that a strictly legal service shall always be made, or waived in writing. Since there can no longer be any doubt that a waiver of service is good in such cases, and as it tends to greatly facilitate the proceedings, a form of waiver has been inserted among the forms in the latter part of the present edition of this manual, to be used whenever the persons to be notified are amicably disposed, and thus make service of notice on them unnecessary.

PROOF OF SERVICE OF NOTICE.

The petitioner, or other person serving the notices to land-owners, must make out and preserve a true copy of each notice served, and must make an affidavit that he did serve it, when, and how, and file these copies and affidavits with the county clerk before the next meeting of the county board. (See FORMS.) Until these are filed, the board of county commissioners cannot legally act concerning the road. (23 Kas. Rep. 732.) If written waivers of service have been taken from any persons, these should also be filed with the other proofs of service.

ROAD ON SECTION LINE.

If a road is to be located, changed, or relocated upon or along a section line, and the petition states the fact, and specifies the section lines to be followed, the place of beginning and the place of ending, the county commissioners may dispense with the survey; and if the owners of all the lands taken agree in writing to the proposed location, relocation or change, and the commissioners are satisfied that the location, relocation or change prayed for is practicable and can be made without unreasonable expense, a view may be also dispensed with. But in such a case the petitioners or signers must own *all* the land through which the road is to run; otherwise a view will be necessary to assess damages, even if but a single land-owner dissents. (8 Blackford's Ind. Rep. 289.)

The same proceedings are to be had upon a petition to alter and vacate a road as upon a petition to establish one; except that upon vacation of a road no damages are to be assessed. (10 Kas. Rep. 95, 99, 100.)

II.

WHAT THE COMMISSIONERS ARE TO DO.

ORDER FOR VIEW.

When a road petition is presented to them for their action, the county commissioners are to see that a satisfactory bond in proper form has been filed; and, if so, whether the petition is regular in form, and whether it properly and clearly describes the beginning, end and course of the proposed road; and they should require the evidence of some one, either by an affidavit or by being sworn orally before them, that the signatures to the petition are genuine; that the petitioners live in the vicinity of the proposed road; and that they are "householders." What a householder is has been explained already. (Pp. 9, 10.) If the petition and bond are in proper form and satisfactory, the commissioners are to so decide, and unless they determine to act as viewers themselves, which they may do if they choose, they are to make an order appointing three householders of the county, who have no interest in the matter, to act as *viewers*. The order must fix a day for the commissioners or the viewers to meet, and direct the county clerk to give notice of the petition and of the day the commissioners or the viewers are to meet. The commissioners must also issue an order directing the county surveyor to meet with them or the viewers at the time fixed. The *county* surveyor must make the survey. (40 Ill. Rep. 522.) The time for the meeting of the commissioners or the viewers must be fixed at not more than twenty days after the date of the second publication in the newspaper, of the required notice. (Section 3.) How the record is to be made and entered will be explained when we come to "What the County Clerk is to do."

FAILURE OF VIEWERS TO MEET.

If the commissioners or the viewers fail to meet at the time fixed, and also on the next day, a new order must be made, directing a new notice and fixing another time for the meeting of the commissioners or the viewers. (Section 3.) Failure of the commissioners or the viewers and the surveyor to meet at the appointed time, or on the next day, or on an adjourned day, invalidates whatever they may have done, or may do. No proceedings taken nor assessments made

by them after such failure can be valid. Their power ceases at once. (103 Ind. Rep. 575.) When the commissioners have decided to act or viewers have been once appointed, the county board has exhausted its powers for the time being. It cannot take another step of any kind until either the commissioners or the viewers file a certificate, or it is brought to the notice of the board, as a board, that the commissioners or the viewers have failed to meet. In the latter case, all the board can do is to fix another time of meeting, or make a new order to act as viewers, or appoint new viewers, and order a new notice to be given. The board can do nothing at all but to keep on fixing new times of meeting, or making new orders to act as viewers or appointing new viewers and ordering new notices, until at last it gets a certificate filed by its members or by viewers; then it can proceed with the case again, but not till then. (34 Kas. Rep. 556.) If a certificate is not made when it should be, the board should ascertain the reason; and if it finds nothing has been done, a new notice should be ordered, and a new order made that the commissioners shall act as viewers or that new viewers be appointed if that seems advisable. (34 Kas. Rep. 561.)

ACTING UPON THE CERTIFICATE OF THE VIEWERS.

When the commissioners or other viewers have filed their certificate, if it is favorable, the commissioners should see whether copies of the notices to land-owners, with the affidavits showing service, are on file; and if not, or if they are not regular in every way, the board should decline to proceed further until this requirement of the law has been complied with; for unless it is complied with, the commissioners have no power to proceed. (23 Kas. Rep. 731, 732.) A land-owner may waive the six days' notice, and if he actually presents his claim for damages to the viewers, or to the commissioners acting as viewers, then it is immaterial whether the six days' notice was actually served upon him or not. (33 Kas. 34; 36 Kas. 664; 47 Kas. 402.) Of course, where that is so, the board of county commissioners need not insist upon the filing of the notice and affidavit as to *him*. (25 Kas. Rep. 517, 518.)

It is highly important, too, that the board should see to it that the county clerk has properly given the required notice in the proper manner and for the proper length of time; for if he has not done so, the board has no jurisdiction to proceed; (19 Illinois Appellate

Rep. 259;) and no matter how good the record may *say* the notice was, if none was in fact given, anybody interested may prove this afterwards, and the whole proceedings will fall. (32 Kas. Rep. 509 and 555–557.) The statute does not require any proof before the board that this notice has been properly given, but provides only that the board shall cause a record of the notice to be entered on the journal. (32 Kas. 555–558.) The county commissioners are, however, sworn officers, and are not expected to make a record which for aught they know may be a sheer falsehood. They are to see to it that the record they make is true. (43 Ohio St. Rep. 335; 66 Iowa Rep. 414.) The notice to be given by the clerk is no mere idle form; its object is that all persons interested may be heard before the viewers or the commissioners acting as such. (32 Kas. Rep. 557.)

But if the notices have been properly given to the land-owners or waived by them; if the copies of notices served and the affidavits of the service have been properly made and filed; if the county clerk has properly given the notice required to be given; and if the proceedings of the viewers themselves or of the commissioners acting as viewers seem to have been regular and valid, then the county commissioners are to consider whether the road should be established, altered, or vacated; (section 6;) and in doing so are to act *as a court*, and exercise a sound, sensible discretion. For even though the proceedings be all regular, and the certificate favorable, yet the petitioners are not, for these reasons, absolutely entitled to their road as a matter of right; but the board is to remember that the taxpayers all over the county are to help pay for the road, if granted, and is to use its own good judgment as the only protection those taxpayers can have in the proceedings. (47 Iowa Rep. 32.) In short, the commissioners are to deliberately and carefully balance the expense of opening the road, on the one hand, against the benefit and advantage of the road to *the public*, on the other. (27 Kas. Rep. 659–663.) The question for the board to decide is, not whether the road will be useful and advantageous *to the petitioners* merely, but whether it "will be of *public* utility"; (section 6;) for only *public* roads are to be made at the expense of the public. However, the law itself seems to imply that if a road is necessary or highly beneficial to twelve householders, it is of public utility; (section 1;) for all

the proceedings are based upon that theory. So all that can be said, at last, is, that the commissioners are to exercise sound, liberal and honest judgment as to the usefulness of the proposed road. *Part* of the road cannot be laid out. All must be or none. (12 Connecticut Rep. 88–94.)

ESTABLISHING ROAD.

If they think the road will be of public utility, then—if the proceedings have been regular and legal—they are to make an order directing that the certificate, survey and plat be recorded, and that order establishes the road; (1 Greene's Iowa Rep. 439;) and the commissioners are then to issue an order requiring the trustees of the townships traversed by it to cause it to be opened to public travel. (Section 6.)

BOARD MAY ADJOURN PROCEEDINGS.

Of course the board is not compelled to act finally at the first meeting after the certificate is filed, but may adjourn the consideration of the matter as it may any other proceeding requiring the exercise of enlightened judgment. (12 Kas. Rep. 17–25.) It may, *at the same* session, reconsider its conclusion and continue the hearing to a future day during the same session. (39 Kas. 283.) But after the session closes, it cannot revoke its order opening the proposed road without a regular petition and proceedings as for vacating any other road. (50 Kas. 635.)

REVISING ASSESSMENT OF DAMAGES.

The next duty of the commissioners is to determine the amount of damages to land-owners; and this subject will be considered when we come to "WHAT THE VIEWERS ARE TO DO." (Section 7.)

UNFAVORABLE ACTION.

If the commissioners conclude that the road is unnecessary, the proceedings are at an end, upon the making of the order by the commissioners so declaring; and thereupon the bondsmen must pay the expenses that have accrued, or be sued upon their bond, unless, of course, the payment is suspended by an appeal or other proceedings. An appeal, however, from the decision in such a case can accomplish but little, if anything, for the petitioners, except additional expense; and it would be better, speedier, and perhaps cheaper, to begin over

again. (See FORMS AND RECORD ENTRIES for proper record entry upon unfavorable action.)

The same proceedings are to be had upon a petition to alter or to vacate a road as if it were a petition to lay out a new one, except that, usually, no damages are allowed land-owners upon the vacation of a highway. (10 Kas. Rep. 95, 99, 100.)

III.

WHAT THE COUNTY CLERK IS TO DO.

THE ROAD RECORD.

By a statute already in force when the road law was passed, the county clerk is required to keep a "road record." This provision is section 49 of chapter 25 of the General Statutes of 1868, (Gen. Stat. 1901, sec. 1665,) and is as follows:

"It shall be the duty of the county clerk to record in a proper book, to be called the 'road record,' a record of all proceedings in regard to laying out and establishing roads in the county, which said record shall include the report of the commissioners [viewers] and surveyor locating such roads, and maps thereof; and such records, or duly certified copies thereof, are hereby declared *prima facie* evidence of the statements therein contained, in the courts of this State."

The road law does not change this provision, except that the record of the notice to be given by the county clerk is to be entered on the *journal.* (Section 3.) It seems, therefore, that this notice should be recorded in *both* the journal and the "road record"; for it is evidently intended that the "road record" shall contain a complete history of *all* the road proceedings.

RECORD ENTRIES.

The clerk has nothing to do with the approval of the bond to be given by the petitioners. That is to be approved by the commissioners when the petition is presented to them. Except to file and preserve papers, the clerk has nothing to do with the matter until the commissioners act upon the petition. It is the usual custom, however, for the clerk to put in proper and legal form the orders and proceedings of the board; and hence it is important that he should be prepared to make proper entries under the law. A complete set of entries to be made upon the record will be found in Forms and Record Entries; and it may be of interest to county clerks that a "Road Record" containing these entries, with blank spaces, so that little writing will be necessary to make up a complete record of each road, is prepared and sold by Crane & Co., blank book manufacturers, Topeka, Kansas. The "Road Record" entries are taken from the forms provided by the author to accompany this Manual, and a full set of notices, petitions, etc., corresponding with the author's forms and with the "Road Record," is also published by the same firm.

IV.

WHAT THE VIEWERS ARE TO DO.*

SHOULD LISTEN TO ALL PARTIES.

The viewers or the commissioners when acting as viewers are not simply to assess damages, but to listen fairly to all persons interested who come before them to oppose or advocate the road, and to come to an honest and reasonable conclusion just as a court would be expected to do. When the commissioners do not themselves act as viewers, the viewers are to the board what a referee is to a court. When the county commissioners do not themselves go out and examine the road proposed, the law has provided for these viewers to go out in their stead and investigate thoroughly, so they can tell the commissioners what they have found out about the matter, and aid the board with their advisory opinion, based upon what they have seen and heard. In short, the viewers are assistants of the board — they are to be the eyes and ears of the commissioners. To illustrate: Suppose a dozen of us have some thoughts of purchasing a distant business — a mine or something of that sort — but we wish to have some *reliable* information about it before we invest, for, so far, we have had all our information from the parties desiring to sell. We meet together and agree to send three of our members to examine into the matter and report to us what they find out, and to give us their honest opinion whether we should buy or not. Now these three men would be our "viewers," and what we should expect of *them*, is precisely what the law authorizes the county commissioners to expect of *their* "viewers," so far as concerns the question whether the road should be laid out or not. The certificate should give the board full information as to all good reasons urged by people for or against the road, so that the commissioners may sit down and use *their own* judgment on all the circumstances. The viewers are to give *their* opinion, and the commissioners are to respect it, and to even rely upon it in case of serious doubt; but at the same time, the

* Under sec. 3, ch. 411, Laws of 1903 (sec. 6 of Collated Road Statutes), although the surveyor is required to meet with the commissioners or the viewers, he is to survey and mark the road only in case they shall so direct after first viewing the proposed road. This seems to require a *preliminary* view *without* the surveyor's assistance, although he must attend.

certificate should be so full and so fair that the commissioners may be able to come to their own conclusion from what it states. No viewer should be so proud and vain of his opinion as *to care* for a moment whether the commissioners agree with him or not. He is simply to use his honest judgment, and then state all the facts in such a way that "the other side" may have every opportunity to convince the board that he is wrong. That is honest and fair, and he is simply doing to others as, under like circumstances, he would have others do to him.

In order to be thus fair, the viewers, or the commissioners when they act as viewers, should not "hurry." They are there to *listen*, and they should do it patiently, attentively, and *courteously*. They should remember that farmers are not all college-bred, and that the majority of them are neither logical nor practical men of affairs. They must learn, what all lawyers have to learn, that very few men can go straight on with their stories, and that it saves time in the end to let most of them go right on in their own way till they get through. It is not likely that any man will come before them to say anything about the matter unless he has some reason that, *to him*, seems a good one, why the road should or should not be laid out; and it is but simple justice that they shall endeavor to find out from his "talk" what that reason is, and then consider it, and give it whatever weight it deserves. If viewers or commissioners were always to act thus fairly and courteously, every man would feel that he had had a fair hearing, and would have confidence that the viewers or commissioners would do what was right, and, as a result, a contest would be a rare occurrence. Every man likes to be treated as if he were somebody. No man likes to be "snubbed." Let the commissioners and the viewers remember that they are to stand impartial between those who do and those who do not want the road; and that they are to consider "the utility, convenience, and inconvenience, and expense, which will result *to individuals*, as well as to the public," if the road should be established. (Section 5.)

ASSESSING DAMAGES.

But, while this is one of the duties of the viewers, or the commissioners acting as viewers, it is not the only one. They are also to "assess and determine the amount of damages sustained by any person or persons through whose premises the said road is proposed to

be established" (Section 5); and here again they are to act as impartial arbitrators between the taxpayers of the county and the land-owners damaged by the proposed road. They are to so judge that no land-owner shall lose anything, nor gain any profit at the expense of the taxpayers of the county. The viewers are to make an actual estimate of each man's damages according to legal rules; they are not to guess at the amount, nor "lump" it; but they are to sit down and *figure it out* according to established rules. (19 Neb. Rep. 289.) If a land-owner appeals, as he may, to the district court, the jury will be required to estimate the damages *by items* in dollars and cents, and to judge of the benefits to be set off in the same cool, methodical way; and why, then, should not the viewers and the commissioners act precisely in the same way, and upon the very same principles as if they were sitting as a jury in the district court under the court's instructions? It must come to that at last, and the *capricious* estimates of the commissioners or viewers only serve to exasperate men to appeal, and burden the taxpayers with the costs such folly and hardheartedness incur. Everything has been settled as to these matters, and we shall now see how the viewers and the commissioners are to go about the assessment of damages.

First, They are to set off against the damages to any one any direct, peculiar benefit his land will derive from the road. What is to be considered such a benefit will be stated presently. If the benefits equal the amount of damages, then *no* damages are to be allowed. (85 Missouri Rep. 637.) If the benefits are less, then *the difference* only is to be allowed.

Second, The public does not become the owner *of the land* over which the road runs; it acquires only *a right to use it* for the purposes of travel. The *land* still belongs to the former owner, and if the road should ever be vacated, he has the land as fully as ever. The public takes nothing except what is actually necessary to make the road a good and sufficient thoroughfare for public travel; so that the trees, grass, hedges, fences, buildings, mines, quarries, springs, watercourses, and in short everything connected with the land over which the road is laid out, and not actually necessary to the road *as a road*, still belongs to the owner of the land, and the public gets no right to such things. He may remove all these things, or use them, or any of them, in any manner he chooses, provided that in so doing

he does not interfere with the *use of the road* as a public highway. This is the only restriction upon his right to these things, or to their use, after the road is laid out. (10 Kas. Rep. 607; 21 Kas. Rep. 247.) So the owner is not necessarily entitled to the full value of the land over which the road runs; for there may be trees and the like upon it, which are still his, and which may be worth money. It would be better, however, and would come nearer exact justice, to make a sort of debit and credit account of the whole matter, and strike a balance; and so, in the first instance, the land taken should be measured, or estimated in acres, and the full actual value should be set down to the owner's credit as "apparent damages"; and whatever will still be left to him after the land is taken and paid for, and which has a money value, can be set down as "set-offs to apparent damages,"—and the whole thing will be thus equalized.

Third, The elements which go to make up the owner's damages are as follows:

(*a*) The *cost of removing* a fence, so as to set it back off of the road. (17 Kas. Rep. 59.)

(*b*) If the road cuts the land in two, so as to require an *additional* fence, or if for any reason the road makes a *new* fence necessary, he is entitled to what it will cost to build it; and he ought not to be stinted, but should be allowed *all* the fence will actually cost. (20 Kas. Rep. 16; 10 Kas. Rep. 608.) Where a road crosses a railroad company's right of way, the company is entitled to just compensation for all its necessary expenditures in constructing cattle-guards and such other things as are required by the statutes to be constructed by it by reason of the existence of the highway. (45 Kas. Rep. 716; 46 id. 104; 48 id. 576; 49 id. 763.)

(*c*) The injury to the rest of the property by cutting off a part. (17 Kas. Rep. 60.) And the injury to the *whole* tract is to be considered, not merely to the immediate part of it. As, for instance, if a large tract is used for a stock ranch, and it is cut up and rendered less convenient, this injury is to be taken into consideration. (25 Kas. Rep. 421.) In short, any reasonable probable inconvenience, whether present or prospective, should be taken into consideration in the assessment of damages. (24 Kas. Rep. 745; 10 Kas. Rep. 439.)

Thus, in a case in New York, a proposed road ran over the grave of one who had been buried there more than fifty years before; and

it was decided that the next of kin was entitled as damages to be indemnified for what removal and suitable interment of his ancestor's remains would cost. (4 Bradford's N. Y. Rep. 503.)

But there is a class of injuries which cannot be accurately estimated; the injury is clear enough, but it is impossible to tell *how much*, in dollars and cents, the party is damaged by it. Damages arising from injuries of this character are, in law, called "speculative" damages — that is damages computed by mere *guess* — and are never allowed, because there is no way in which they can be figured out. (39 Barbour's N. Y. Rep. 266.) Thus, where a jury allowed damages to a party for the exposure of his orchard to thefts by tramps and others passing along a railroad running through his land, the Supreme Court decided that no such damages could be allowed, because, necessarily, they were sheer guess-work. (32 Kas. Rep. 609; 19 Neb. Rep. 289.)

The safest test in assessing damages for any particular alleged injury, is to see whether any amount can be actually arrived at by calculation. Thus, a land-owner says: "That road will run between my house and my barn, which will be a great injury to my place." "Very well," say the viewers; "how much *in money* will that injury amount to?" "Five hundred dollars, at least!" says the land-owner. The viewers take out their pencils, and say: "Now, give us the items that make up that amount, so we can figure it out. You know, we can't guess at it, nor 'lump' it, but we must be able to state just how we settled on that particular amount, so the district court, if the matter should go there, can see whether we have allowed you enough or too much." He may tell what new fences will cost; but when he is asked to coolly calculate, on some sound basis, the present amount of injury arising from the mere fact that his house and barn are henceforth to be upon opposite sides of a public road, he will have a puzzle which it is not at all likely he can solve. All can see that it may be undesirable to have the road there, and all may even admit that its location is an actual injury; yet it is one of those injuries that cannot be accurately expressed in dollars and cents. The object of giving a land-owner damages is, to enable him to place himself in as good a pecuniary position as he would have been in if there had been no road laid out. With the money allowed him for a new fence, he can get a new fence and his injury is

healed; but if you give a thousand dollars damages for having his house and barn on opposite sides of the road, he cannot take that thousand dollars and move either his farm or the road. He can, however, move his barn or his house, and here comes in an element of damages that can be understood. The injury of having a road between his house and his barn can be estimated only by estimating the expense of moving the house or the barn to the other side of the road, and the additional expense of repairing the injury consequent upon the removal. So, in every case where damages are claimed for an injury, and the injury is a real one, the viewers should reflect by what means the injury can be repaired, and then what those means would probably cost; and this amount will be the damages from that particular injury.

(*d*) In addition to all these items, the viewers should ascertain the precise amount of the party's land embraced in the road, and allow him for this at its fair value per acre.

OPINIONS AS TO DAMAGES.

The *opinions* of witnesses as to *how much* a party is damaged are not good evidence; for, as before stated, the damage is not a mere matter of opinion, but of *calculation;* and, of course, as the whole matter may come before a court at last, the viewers ought not to base their assessment upon anything but *legal* grounds. Why shall not the viewers seek to decide according to law *in the first instance*, and thus render an appeal and revision unnecessary in order to give a party justice? Opinions as to the amount of damages are not legal evidence, and ought not to be relied upon. (21 Kas. Rep. 253.)

BENEFITS AS OFFSETS TO DAMAGES.

When all the elements of damage have thus been ascertained, and the total amount footed up, the viewers should next determine what benefits, if any, the claimant's land will derive from the construction of the road, and deduct the amount of these from the total amount of damages. Here, too, the same cold rule must be applied, and mere fancy must not be indulged. Unless a benefit is worth so much in dollars and cents, so as to be capable of rational computation, it is a purely "speculative," fanciful benefit, and cannot be taken into account any more than can a "speculative" injury.

Before any benefit can be considered at all by the viewers, it

must be clear that it is one which the particular claimant *alone* will enjoy. The advantage of having a public road in his vicinity is one common to the whole community; it is a *public* advantage; and the claimant pays in taxes for all *public* conveniences. (17 Kas. Rep. 59.) Neither is the increase in the market value of the land because of the road to be considered; for however much of a benefit this may be to *the owner*, it confers no benefit upon *the land* itself. In short, the only benefits which can be properly considered are such as add to the usefulness or convenience of *the land as land*—not to its market value, but to its value *for use* (21 Kas. Rep. 252; 27 Kas. Rep. 391–393), and which are, at the same time, peculiar to the particular tract of land—not common to all the lands in the neighborhood. (17 Kas. Rep. 58; 21 Kas. Rep. 247; 27 Kas. Rep. 391–393.)

Thus, if a stream on the land will be bridged by the road; if the land will be drained; or if any similar improvement of this kind will result from the laying out and opening of the road, these improvements may be properly considered. (21 Kas. Rep. 252.) In the language of the Supreme Court, the benefit to be considered, must be "something which affects the land itself, directly and proximately;" "something which increases the *actual* or *usable* value of the land, as well as the market or salable value thereof, and not such as increases merely the market or salable value alone." It must be something which gives increased value to "the *use* of the land *as land*" to be used—not to be sold, merely. The benefits must be "such as are direct, certain and proximate, and not such as are indirect, contingent, or remote." (21 Kas. Rep. 247–252.)

LAND-OWNER MUST MAKE WRITTEN APPLICATION.

The viewers have no right nor power to assess damages in favor of anyone who does not make his application *in writing*, giving a description of his land, etc. Though the land-owner may come before the viewers, and personally demand the assessment of his damages, the demand cannot be heeded. He must make a regular, *written* application or the viewers are powerless to consider his claim. (24 Ohio St. Rep. 467–471.) But it is no more than common honesty that the viewers should tell him this in time, and not leave him to find out afterward that he has lost his claim through ignorance of the law. In short, viewers should, in all they do,

remember that ignorance of the law is very usual, and that it becomes no gentleman nor honest man to make that ignorance in another the cause of suffering or loss. It will be seen, presently, that nothing whatever will excuse the land-owner's failure to make his written application to the viewers. If he does not present it, he is forever barred from claiming compensation.

INTEREST OF APPLICANT FOR DAMAGES.

Supposing a proper application to have been made, the next question will be, What interest has the applicant in the land? For although he may be in possession, yet if he has no right to the land, as, if it should be Government land upon which he is a mere "squatter," he cannot be allowed any damages for injury to it. (18 Kas. Rep. 124–128.) Each claimant is entitled to damages only to the extent of his own interest in the land. If there are several owners, each is entitled to only the damage to his share. (18 Kas. Rep. 128.) If one man owns the land and another the crops, the land-owner is not entitled to any compensation for damage to the crops, nor is the owner of the crops entitled to any assessment of damages as to the land. (18 Kas. Rep. 128.) And in such cases, *each* party interested must make his own written application; if one applies and the other does not, the viewers can assess damages in favor of only the one who applies, and only as to his own interest. One in possession of land under a bond for a deed, however, is considered as the *owner* of the land in these proceedings, and he alone is entitled to the damages. (15 Kas. Rep. 427; 17 Kas. Rep. 240–246.)

No damages can ordinarily be allowed any one upon the vacation of a road. (10 Kas. Rep. 95, 99, 100.)

A SUGGESTION.

When it is remembered that almost every question that can arise in these proceedings, however puzzling it may seem, has been decided by the Supreme Court of some State, and that our own Supreme Court is constantly deciding new questions under our own road law; and that matters not yet thought of, and not mentioned at all in this nor any other book, may at any time be thus brought up and decided; and when it is further remembered that although commissioners or road viewers can rarely ever be thoroughly posted lawyers, yet their proceedings may at

any time be subjected to the severest judicial scrutiny, and if found void or defective, or contrary to some decision of the Supreme Court, may result in the most serious injury to the people immediately interested, as well as to the county, it is obvious that upon the question of damages the viewers should have the assistance of zealous counsel who will *reason out* these questions, and hunt up and show to the viewers every decision that has been made anywhere upon the matters to be decided. The viewers have no authority to employ advisory counsel, and even if they had, such counsel would be of little use,—for the matter would be of very little interest to him. But if each claimant of damages were to employ counsel to advocate his claim before the viewers, such counsel would be zealous in looking up and thoroughly studying *that particular claim*, and would, if honest in his profession, present to the viewers every reason and every decision in favor of that claim; and thus every claim for damages would be so fully presented by personal zeal and industry that the viewers would be as fully informed, and as capable of deciding legally and justly, as any court; for this is the very way in which judges are instructed as to each case that comes before them. It is clear, however, that if claimants were to employ counsel to leave their offices shut up, and go out miles into the country to present their cases while the viewers were there on the ground, the expense would be burdensome, and besides, the distance from law books would make the lawyer's mere "talk" of little real assistance to the viewers. Is not the following, then, a good suggestion? Let the viewers or commissioners, as each application for damages is handed them, or, by a general notice to land-owners, inform the claimants that on a certain day, at a designated place, the viewers will sit *at the county seat* for the purpose of hearing arguments by counsel in favor of all claimants who choose to have their claims so presented; and suggest to the claimants that several of them may club together and employ counsel at little expense to each claimant; and that the viewers or commissioners are perfectly willing and desirous to hear argument; then, at the appointed time and place — perhaps at the court-house, or in some law office — the viewers or commissioners could sit precisely as a court. If, during counsel's argument, any viewer or commissioner wished information as to any particular question that ocurred to him, he could request counsel to

discuss that question in his argument; and thus the viewers or commissioners could rest secure that they had gathered all the information possible upon the question of damages; and after the discussion, could, upon private consultation, decide upon the amount of damages to be awarded to each claimant. Such a proceeding would be perfectly valid; for the viewers are not required to decide upon their certificate at the very time of the view and survey; but the view is for the same purpose as a view of premises by a jury during a trial in court: it is to enable the viewers to judge more intelligently of the matters to be decided. The certificate may be made at any time "on or before the first day" of the next session of the county commissioners. (Section 6.) And it has been expressly decided that the viewers may adjourn to meet at another time, and that even after they have already agreed upon their certificate, they may change it, and even certify the other way. Until their certificate is filed with the county clerk, they have complete control over it. (17 Ohio Rep. 101–104.) Besides, a mere view will not teach them who owns this or that tract of land, nor what it will cost to move a fence or to build one; nor even the value of land in that vicinity. The law requires these things to be considered by the viewers, and there must be some lawful means for securing reliable information; and as the certificate of the viewers will, on appeal, be examined in the light of the strict rules of law, it seems that the viewers should, in the first instance, be entitled to have the means of making a strictly legal assessment, with a full knowledge of all the circumstances. But, let the reader remember that this is but the suggestion of the author of this book; it has not been decided to be valid; and although the author has little doubt about the propriety of his suggestion, his readers must use their own judgment as to accepting it.

DECIDING UPON CERTIFICATE.

The viewers or commissioners, having estimated all the damages that will have to be paid by the county if the road should be established, and having carefully considered the importance of the road, must decide whether, in view of the expense, the road is needed badly enough by the public to justify its establishment. But the *public* importance of a road does not depend upon whether the whole county will actually travel it. It may be of public utility although

it serves, principally, only to give *one man* a chance to get to town over a public highway. "The state is not bound to allow the citizens to be walled in, insulated, imprisoned; but may provide them a way of deliverance" (25 Iowa Rep. 546, 547); and "the fact that a road has no outlet or egress at one end, and that it primarily and principally benefits a single individnal, does not destroy its character as a public highway, nor prevent the public from taking private property for it." (12 Kas. Rep. 17–25.) What is a road of "public utility"? Simply a road required for public *convenience;* it need not be absolutely necessary to the public; but it is of "public utility" if it will be generally useful and convenient to have such a road. (86 Ind. Rep. 68.) By usefulness to the public we are not to understand that everybody needs the particular highway as a means of universal travel, but whether it will be useful to the community to have a road over which a few people, or even one person, can reach a school, a voting place, the county seat, or the like. The public wants men to serve on juries, to testify in courts as witnesses, to vote, to get and send letters, public notices and newspapers, and to send their children to school and their products and wares to a ready market; and hence, a road enabling citizens to do these things, although it serves this purpose as to but a very few, or as to only one person, is so far of utility to the public, which needs to have its citizens take part in public affairs, grow intelligent and engage in traffic. The question is not how many people will likely travel the road, but whether it will be beneficial to the public to have the people who *will* travel it be able to get away from home for public or commercial purposes. However, even if the road be of such public utility as to justify the necessary expense to the county if established, it still does not follow that the viewers should make a favorable report; for they are to consider the inconvenience it may cause to land-owners, and for which they cannot be entirely compensated by the damages to be paid. The road *as prayed for* may run through a beautiful grove, or park, or pleasure-ground planted or laid out many years ago, and dear to a family from its past associations; it may traverse the graves of the dead; or, in many a way, it may break in harshly upon memories, pleasures, or laudable tastes of citizens in such a manner that sordid dollars and cents can afford no compensation for the wounded hearts or thwarted tastes; and the

statute requires the viewers to consider all these things. The question for the viewers to decide is, not whether *a* road is necessary, but whether the particular road "as prayed for" is so far necessary as to justify, not only the expense to the county, but the inconvenience to private citizens; for if a road be necessary, yet if one could be laid out just as well without so much expense, or with less inconvenience to private citizens, while the particular road proposed will be much more expensive, or will put some land-owner to great inconvenience or annoyance, the viewers should unquestionably decide against the proposed road. In short, the viewers are to consider three things: the benefit the road will be to the public, the expense it will be to the county, and the inconvenience or annoyance it will cause to particular persons. But public necessity is supreme, and if the public necessity cannot be supplied in any other way than by the very road proposed, then the expense to the county and the inconvenience to private persons cannot stand in the way of establishing that road.

PREPARATION, FORM AND FILING OF CERTIFICATES.

When the viewers have heard all parties interested who have appeared before them, assessed all the damages properly applied for, and fully made up their minds whether they will certify for or against the proposed road, their next and final duty is to draw up their certificate, sign it, and file it with the county clerk on or before the first day of the session of the board of county commissioners then next ensuing. The certificate may be signed by two of the viewers, if the third does not agree to it, or does not choose to sign it. (8 Kas. Rep. 258.) Usually, and perhaps properly, the certificate recites that the viewers have viewed the road, caused a survey to be made, etc.; but the statute requires, in terms, no more of the viewers than "a certificate stating *their opinion* in favor of or against the establishment, alteration or vacation of said road or any part thereof," and that they shall "set forth the reason of the same." (Section 6.) The Supreme Court has decided that "no elaborate presentation of reasons *pro* and *con* is required," and that a report which simply says that the proposed road "is practicable," and that the viewers "recommend its adoption," is sufficient (8 Kas. Rep. 259); but it was not altogether necessary for the court to decide this in the particular case, and it is not at all unlikely that when it does become necessary, the court will say such a decision was wrong; for it violates both the

letter and spirit of the law. The law plainly requires, in so many words, that the viewers shall "set forth *the reason* of" their opinion; and to say that the road is "practicable" is surely not setting forth much of a reason why private property should be confiscated for it, or the taxpayers of the county burdened with the expense of establishing it! It is "practicable" to lay out two roads side by side, yet there may be some doubt as to the public necessity for doing so. Neither is it *a reason* for the viewers to say they "recommend" the road; for that is no more than a favorable *opinion*—it is no *reason* for an opinion. It has been decided in Ohio, too, under a similar law, that unless the certificate states that the road will be of public utility, the commissioners have no power to establish it. (35 Ohio State Rep. 445.) It would be better to err on the safe side, and set forth substantial reasons for recommending the road.

The viewers must fix the width of the road. If they fail to do so, all their proceedings must go for nothing. "The width of all county roads shall be determined by the viewers at the time of establishing the same, and shall not be more than eighty nor less than forty feet;" but to avoid injury to a growing hedge or other permanent improvement, the removal of which would cause too great an expense, the width may be as low as thirty feet. (COLLATED ROAD STATUTES, Sec. 11.) If the width is not fixed by the viewers, the whole proceedings are void. (5 Blackford's Ind. Rep. 462; 8 Blackford's Rep. 208; 9 Indiana Rep. 103; 112 Pennsylvania St. Rep. 212.)*

* But see 13 Kan. 258, decided under the old statute, that width would be forty feet.

V.

WHAT THE LAND-OWNER IS TO DO.

APPLICATION TO VIEWERS.

If a land-owner lives in the county, or has an agent living in it, and no notice has been served upon him or his agent by the petitioners, he should, if he desires to contest the road, pay no attention whatever to the proceedings; for if he ignores them, the road cannot as to him become legally established. (23 Kas. Rep. 731, 732.) If he has no desire to contest the road, he can present his claim for damages to the viewers, the same as if he had received notice; for the notice is for his benefit, and he may waive it if he chooses. (13 Kas. Rep. 265; 25 Kas. Rep. 517.) If notice has been properly served upon him, then he has no choice, but *must* present his claim to the viewers, or be forever barred from claiming any compensation if the road should be established through his land. How strict this requirement is, may be seen from the following case decided by our Supreme Court: "On the morning of the day appointed, the plaintiff, who lived about five miles from where the viewers were to meet, prepared his claim for damages, had his horse saddled and at the door to carry him to the place of meeting of the viewers in time to have met the viewers and present his said claim, and intended so to do; that his mother, a resident of his family, was taken suddenly and dangerously ill with a congestive chill, which in a few days terminated in death; that plaintiff was called upon and stopped from meeting with said viewers to be with his mother in her illness, was with her, at her bedside attending upon her, and that had it not been for his mother's illness, as stated, he would have presented his claim for damages to the said viewers, and said viewers would have allowed plaintiff his damages and reported favorably on laying out said road; that plaintiff appeared before the defendants (county commissioners), before they had acted on the report of the said viewers, and presented his claim for damages in writing, and made known to them the above facts." The county admitted all this to be exactly true; yet the Supreme Court decided that no damages could be allowed, because the plaintiff had not presented his claim to the

viewers; that *nothing* will be an excuse under the statute. "No exception is named in the statute; no authority is given to the courts to declare one." (13 Kas. Rep. 146; 25 Illinois Rep. 518.)

The application to the viewers for assessment of damages must be written or printed, and must describe the premises. Unless thus presented, no attention can be paid to it. (24 Ohio State Rep. 467–471.)

The land-owner is entitled to no damages for injuries likely to result from acts he has done since notified of the proceedings; as, for resetting a fence erected on the land after view and assessment. In whatever he does while the proceedings are pending, he takes the risk that the road will be finally established. (22 Iowa Rep. 557.)

APPLICATION TO COUNTY BOARD FOR REVISION.

When the report of the viewers has been made, the land-owner has an opportunity of seeking a revision of the amount allowed him; and if he considers himself aggrieved by the action of the commissioners upon his claim, he may appeal to the district court, and obtain a trial before a jury. He may, however, lose his right of appeal by negligence; for the county commissioners are not bound to notify him when they act upon the matter finally, and, unless he watches closely, he may not discover that it has been acted upon until the time for taking an appeal has gone by. (12 Kas. Rep. 25.) If the viewers disallow the claim, no matter how unjust their decision may be, the land-owner cannot enjoin the road on this ground, but must appeal, or resort to a petition in error. (31 Ohio State Rep. 621.)

RIGHTS OF, WHEN NOT NOTIFIED.

If a land-owner, resident in the county, or having a resident agent, receives no notice from the petitioners and makes no application to the viewers, he may, at any time within twelve months after the location of the road, file with the county commissioners an application for damages, and have his damages assessed by them (section 5); and of course he may appeal from the decision of the board as in other cases. The provisions for barring the claims of land-owners have no application to persons who neither live in the county themselves nor have an agent living in the county. (25 Kas. Rep. 616, 617.)

VI.

WHAT THE ROAD OVERSEER IS TO DO.

It would be needless to tell the readers of this book who a road overseer is, or how he is elected, for all know without telling, and besides, the statute is clear enough upon those matters without further explanation. So this chapter will deal only with the *duties* of a road overseer. These are: *First*, To open established roads and keep them open; *second*, to keep the roads in his district in repair and in safe condition for travel; *third*, to collect road taxes; *fourth*, to keep proper accounts and make proper reports of his official doings.

He has other duties to perform, under statutes as to noxious weeds, for the prevention of prairie fires, etc., but this Manual has to do only with his duties as to roads. The statutes alluded to will, however, be found in the Collated Road Statutes.

NOTICE TO LAND-OWNERS TO OPEN ROAD.

As we have seen, when the county commissioners establish a public road, they are to issue an order to the trustee of each township through which any part of the road runs, requiring him to cause the road to be opened for travel so far as it lies within his township. (Sec. 6.)

When he receives this order, he must, in proper time, direct each road overseer in the township, through whose district any of the new road runs, to proceed to open the road, or to cause it to be opened; and then the overseer must begin his task, which is one not always perfectly free from trouble and annoyance, nor even from danger. His first duty is to notify the owners of the lands through which the road runs, if the owners are residents of the county, or the agents of non-resident owners who have agents resident in the county, to open the road themselves through their respective lands. It will be a trespass if he enters the land to remove a fence or the like unless the land-owner has had the notice allowed him by law. (25 Illinois Rep. 518.) If the owner of any of the traversed lands should be a minor, an idiot, or an insane person, then the notice must be given to that person's guardian, if there be a guardian resident in the county.

This notice is required, however, only in case the land is inclosed or cultivated. If it is vacant, unoccupied and uninclosed, so that there is no crop, no fence, nor anything of the sort to be removed in order to open the road, then no notice to the owner of such land is necessary; for the object of the notice is only to enable the owner to get his crops off, or to move his fences himself, so as to cause the least injury and inconvenience to him. For this reason, if land is in possession of a tenant, who has a crop on it that he owns, notice ought to be given to the tenant as if he were a land-owner too,—for he is the person to be benefitted by it; but notice must also be given to the owner of the land, if he lives in the county or has an agent living in the county.

If this notice is served *after* the first of October and *before* the first of March, it should require the parties notified to open the road through their lands *within ninety days* after being served with the notice; but if it is served *after* the first of March and *before* the first of October, then it must require the parties to open the road on or before the first day of the next January. (Section 113.) But suppose the notice should be given precisely *on* the first day of March or of October, neither before nor after, shall the notice then require the road to be opened in ninety days, or on the first day of the next January? Much may depend upon which is right, if notice should be so given; and as a mistake might render the acts of the overseer illegal; and as this question has not yet been decided, and *may* be decided either way upon very plausible grounds; and as there cannot usually be any particular necessity for giving notice on these very days,—it would be prudent for the road overseer not to serve any notices on either the first day of March or the first day of October, and thus avoid all question as to legality on this ground.

As this notice is to be "served" upon the parties, of course it must be written or printed; it cannot be "served" orally.

If the surveyor has done his duty, and the road has been "conspicuously marked throughout" (section 6), the land-owner need have little difficulty in ascertaining its exact location through his lands; as the very object of the surveyor's marks is to enable the land-owner or the road overseer to know the route of the road; still, the road overseer's notice should be reasonably specific, and should give such information as to enable the land-owner to readily under-

stand what is expected of him. For instance, it is not at all impossible that two roads may at different times have been established through the same person's lands, and neither of them may have been yet opened; and in such a case how is he to know which road he is to open unless the notice tells him? In this, as in all other cases where error is probable, it is better to err on the safer side, and make the notice full enough to put the matter beyond doubt. Where printed notices are used, this will not involve a great deal of labor, but a serious error might cost the overseer much more than it would to even sit down and carefully and painfully write out all the notices in full. But the printed notices prepared in connection with this book are safe and full, and it will be found much more convenient to use them than to write out the notices and incur the risk of an occasional "slip of the pen." It has been held that if the proceedings for laying out the road are invalid, the overseer will be liable to the land-owner as a trespasser for opening it; and that even a writ of mandamus compelling him to open the road will not excuse him if it has not been legally laid out over any land-owner's premises. (31 Ill. Rep. 97.) But neither the land-owner nor the overseer is to go by any description of any kind in actually opening the road: these may serve to show what road is to be opened, and cases may happen in which they would be very important for that purpose; but the road is to be opened according to the "monuments" or marks actually set up on the land by the surveyor under the direction of the viewers.

In opening a road, the overseer must follow strictly the marks of the surveyor, and cannot exercise any discretion in the matter. "After all the care to have a road located by commissioners, it never was designed that an overseer should change its location to suit his notions of public utility." (18 Mo. Rep. 361.) A mistake as to the correct line of the road may make him liable in damages to the injured land-owner. (29 Ill. Rep. 135.) Unless the recorded survey shows the course to be otherwise, every line between two marks set up by the surveyor must be straight and direct. (18 Mo. Rep. 360, 361.) And if the survey as recorded does not agree with the marks, stakes or stones set up, it has been held that the marks, stakes or stones must be heeded rather than the record. (8 N. H. Rep. 474–476.) Our statute makes no provision for giving the road overseer

a copy of the survey for his guidance. The law gives him no means of information but the marks to be set up by the surveyor at the time of the view. But the exact location, course and distance of the road are made matters of record of which everybody must take notice, and the overseer cannot be exempt from this general requirement. It seems to the author, however, that a copy of the survey should accompany the order to the township trustee requiring him to cause the road to be opened, and should be a part of that order to this extent: that inasmuch as the order must necessarily describe the road to be opened, else it could not be intelligently obeyed, the description should be the description in the survey and report — not merely the description given in the petition. This would enable the trustee to give his overseers ample instructions as to the route of the road; and the author believes the statute contemplates such a description in the order to the trustee.

The object of the surveyor's report, and of the map, is merely to preserve the best evidence that can be preserved of where the road runs, in order that some means of knowledge may be left should the stakes and stones set under the direction of the viewers be removed or destroyed, purposely or by accident; for, especially if the road had not yet been used long enough to mark clearly its course, there would be no reliable means at all of finding it in such a case if no record of the survey had been kept. But it must be remembered always that the surveyor's report and the recorded map are not *the road;* that it is marked on the ground itself by the stakes and stones set up. The surveyor "acts merely as the servant of the road viewers, and the road viewers locate the road where it is *actually* located, and not where the field-notes may happen *to show* that it was surveyed or located." (34 Kas. Rep. 600.) The viewers are to go over the ground and decide just where the road shall run; they are to point out the course to the surveyor and have him set up "monuments" (stakes or other durable marks) while they look on and see that the monuments are put where they belong. The surveyor then must make a description of the courses and distances thus marked out on the ground; and to do this properly he makes a survey and plat, so that his report is the same in effect as if he were to write a letter describing the road as marked out by the viewers. Damages are allowed to land-owners with reference to the line of the road as thus

actually staked out there on the ground, and all that is done is done with reference to the road so actually staked out, while the surveyor's report merely describes *what has been done*, precisely as county maps show the boundaries of counties as established by law. It is not the location of the road; and no more settles where the road shall run than a newspaper description settles the height of a mountain or the width of a lake—the description cannot alter the actual fact. The road is where the viewers marked it on the ground; and if the surveyor's report does not agree with that, so much the worse for the report—the road is precisely where the viewers decided it should be. (34 Kas. 595, 598, 601.) So, neither the overseer nor the land-owner has any guide to go by in opening the road but the marks which the viewers have caused to be set up; *they* have nothing to do with the report nor with the map; if "the place of beginning or true course" of the road has become "uncertain by reason of the removal of any monument or marked tree by which the road was originally designated, or from any other cause," it must be *relocated* by proper proceedings, and *new* marks must be set up before the overseer or the land-owner can be called upon to open the road. Of course, when the reviewers come to relocate the road, the surveyor's report may be of great service *to them* in enabling them to find where the lost marks originally were; but the overseer and the land-owner must go by *the monuments set up on the land;* and if these are gone, must wait till they are restored by a review; otherwise the road actually opened might not be the road the original viewers laid out, and might run so as to do a land-owner trifling injury for which he had been paid large damages, while the public would be greatly inconvenienced; or, on the other hand, serious damage might be caused to the land-owner, largely in excess of what the viewers had allowed him with reference to the road *as they meant it to be.*

But when the road has been opened, the overseer's work has but commenced; for he must keep it open and safe to travel. To this end he must see that it is kept free from all unlawful obstructions. What obstructions are unlawful is shown in general terms by the statutes. (Collated Road Statutes, sections 19 to 43.) But some particular matters may be mentioned with advantage here. A "willful obstruction" does not necessarily mean an obstacle to travel put

in the road for the express purpose of obstructing, although, of course, that would be a willful obstruction: but a party who does any act which has the effect of obstructing the road, and after knowing that it has that effect still persists in what he is doing, and does nothing to avoid such an effect, is guilty of a willful obstruction. Thus, where a man built a dam on his own land, and it had the effect of constantly backing water over a road so as to keep it submerged and unfit for travel, and, having been notified by the overseer, still did nothing to remove the obstruction, the Supreme Court decided that he was guilty of a "willful obstruction." (32 Kas. Rep. 450–455; see also 8 Kas. Rep. 255–259.) So, an owner of adjacent lands consented that some parties might fell a tree belonging to him, but on condition that it should not fall into the highway, or that they would remove it if it did; but the tree did fall into the road, and remained there, and he knew it. It was held that he was guilty of obstructing the road. (37 Ohio State Rep. 1–10.) These examples show, in general, what will constitute a willful obstruction: (1) Something done by one, or under his direction or permission; (2) Knowledge on his part that the effect of what is thus done is to obstruct the road; (3) Not seeking in good faith to do anything to remove or prevent the obstruction. But to be guilty he must have done some act. Mere omission to remove an obstruction put in the road by some other person, without the coöperation or consent of the party accused, will not constitute the offense of willful obstruction. (59 Illinois Rep. 306; 12 Bush's Ky. Rep. 264; 52 Iowa Rep. 228.) It is no offense to obstruct an abandoned road. (36 Illinois Rep. 92.)

Our Supreme Court has decided that when a railroad has interfered with a highway, the company is bound only to restore the road to its former condition, and is not thereafter bound to keep it in good condition; that the company's duty ceases with the act of restoration. (27 Kas. Rep. 685–692.) We have already seen that the land-owner has the right to still use the premises over which the road runs in any manner which does not interfere with public travel; that he may dig coal, mine minerals, quarry rock, or plant out trees. Hence, he cannot be charged with obstructing the road, unless what he does is incompatible with the rights of the public; and he has a right to have a jury decide this question. (22 Kas. Rep. 285–294, 295.)

A road overseer is a ministerial officer, and his duties and powers are confined to his own district. When he leaves his district boundaries, he leaves his office behind him, and outside his district has no power as a road overseer. (13 Ohio State Rep. 406.)

It has been decided in Ohio that to resist a road overseer in the lawful discharge of his duty, is "resisting an officer," within the statute making such resistance a criminal offense. (26 Ohio State Rep. 196.)

It must not be forgotten that there was law in force long before the road statutes were enacted — the general rules of justice known as "the common law"; and hence the remedies pointed out by the statute are not always the only remedies the public can have for the protection of the public roads. Thus, if a railroad company in constructing its track should tear up a public highway, and persistently refuse to put it in proper condition again, it has been held that the attorney-general (or the county attorney here) might bring a suit and obtain an injunction forbidding the company to use the crossing until it should do its duty by restoring the road to its proper condition. (36 Ohio State Rep. 434.)

The duties of the overseer as to working the roads, giving receipts, keeping and rendering accounts, etc., are all plainly set forth in the statute, and need no explanation here. Forms for receipts, or certificates for materials, and of overseer's accounts, reports, etc., will be found under the heading, "Forms and Record Entries."

VII.

HOW TO CONTEST A ROAD.

Anyone through whose lands a proposed road will run may contest its establishment, unless he does some act which will preclude him from that right. But nothing he can do will, perhaps, waive his right to object, unless the county commissioners had jurisdiction to carry on the proceedings; it is only where the county board had, by following the statute strictly, become entitled to act, that any such question as that of waiver of the right to contest can arise; and the general rule upon which the courts act in such matters is, to be strict in requiring everything upon which jurisdiction depends, but if jurisdiction has been clearly acquired, then to be liberal in regard to irregularities in the proceedings themselves. (34 Kas. Rep. 562.) If the board has acquired jurisdiction, mere irregularities or mistakes may be waived by the land-owner's silence or conduct. The waiver is not a personal matter, but relates only to the land; so that if a land-owner should waive notice of the view, this would preclude him from objecting because of the want of notice so far as concerned the land he then owned; but if he should afterwards purchase other lands over which the road runs, he could object that the owner of *that* land was not notified, and make a contest as fully as the original owner could have made it. (18 Kas. Rep. 386–396.) Before going further, however, let it be understood that we are now speaking of a contest *against the road* as illegally established — not a contest by a land-owner over the damages; the latter subject is fully discussed under the head, "What the Land-Owner is to do." With this understood, let us here see — first, who can contest the road, and what waives the right; second, upon what grounds it may be contested; and third, by what proceeding the contest may be made.

WHO CAN CONTEST.

A taxpayer cannot bring any proceedings *as a taxpayer* to contest the location of a road. The taxpayer's rights are represented by the State alone — they are *public* rights — and they can be asserted only by the county attorney or by the attorney-general suing in the name of

the State. The taxpayers have no other means of redress, except that of course they may, if they can, persuade the county board not to lay out the road. The only persons who can personally contest the road are those whose *private* rights are affected by it; and land-owners, whose lands are affected by the proposed road, are perhaps the only persons who answer this description.

Of course, that the land-owner claims damages before the viewers cannot be a waiver of his right to contest; for that would be requiring him to take the chance of losing all compensation if his contest should not succeed. Besides, the law gives him no opportunity to contest on legal grounds until his damages have been assessed. But if he presents to the viewers his written application for damages, he does waive his right to object that notice of the view was not served upon him. (25 Kas. Rep. 517, 518; 33 Kas. Rep. 34; 36 Kas. Reports, 170; 36 Kas. Reports, 664.) An appeal from the assessment of damages by the county board waives all objections to the validity of the proceedings, and nothing remains open to contest but the amount of damages. An appeal may, however, be taken as to the whole proceedings, and this will save all questions for review in the district court.

GROUNDS OF CONTEST.

The grounds of contest must be based upon either the want of power in the county commissioners to act in the case at all; or the irregularity of their proceedings; or the illegality or injustice of their decision. The power of the commissioners to act at all is called *jurisdiction;* the mode in which they are to exercise that power is the *procedure;* their final determination is their *decision.* The whole subject of the grounds of contest will be gone over under the three heads—*jurisdiction*, *procedure*, and *decision.*

Jurisdiction.—The law defining the powers of county commissioners authorizes them "at any meeting" among other things, "to lay out, alter or discontinue any road running through one or more townships." Nevertheless, they can exercise this power in any particular instance only when the matter is properly brought before them as provided by statute; they cannot act upon their own motion, but must wait, powerless, until the proper persons petition them in the manner prescribed by law. (18 Kas. Rep. 386–396.) Until a petition is presented to them, no jurisdiction exists. Again, this peti-

tion can be presented only by *householders* of the county; a petition signed by any other class of persons is the same as no petition at all, for no others have a right to present a petition. And *twelve* householders of the county must sign it; eleven householders of the county and one non-resident, or one not a householder, will not do, but the petition will still be the same as if *no* householder had signed it. Hence, it is a good ground of objection to the jurisdiction of the commissioners that any one of the necessary twelve signers was not a *householder*, or not a resident *of the county*. (12 Ohio State Rep. 635, 636.)

A non-resident land-owner can no more be regarded as a legal petitioner than if he owned no land; the petitioners must be householders *of the county*. (35 Ohio State Rep. 454.) If twelve such legal petitioners have signed the petition, however, and it has been presented and the proper notice has been published by the clerk, the death of one of the petitioners afterwards will not affect the power of the commissioners to act, for their jurisdiction will have become complete. (35 Ohio State Rep. 444.) It is not necessary, either, that the twelve petitioners shall all sign the same petition; for duplicates may be circulated for convenience, and they will all be treated as one petition; so that if the duplicates contain the signatures of twelve householders when taken together, that will be sufficient. (31 Ohio State Rep. 386; 32 Ohio State Rep. 544; 36 Ohio State Rep. 288.)

But even though properly signed, the petition may be fatally defective for want of an intelligent description of the proposed road; for unless the description would enable a practical surveyor to locate it, the petition confers no jurisdiction upon the commissioners. (59 Ind. Rep. 54, 55; 73 Ind. Rep. 454–456.) Supposing, however, that the petition is sufficient, there is yet another indispensable step to be taken — the notice to be given by the county clerk. If this notice has not been actually given, precisely as required by law, the commissioners have no power whatever to proceed. (32 Kas. Rep. 507, 557.)

But the petition and the notice by the county clerk give jurisdiction only to consider the propriety of laying out the road; still another step is required before it can be laid out over any land-owner's premises. Before any resident's land can be taken, he must have

six days' notice of the meeting of the viewers, or he must waive that notice. If any man living in the county or having an agent living in the county has neither been served with notice nor waived it, then, no matter how valid the proceedings may be as to every other person, an order establishing the road through *his* land will be absolutely void. Not only so, but the order will be void if notice has been served on the land-owner, unless a copy of the notice, with an affidavit proving its service, is filed with the county clerk *before* the order establishing the road is made. (23 Kas. Rep. 731, 732.) After the Supreme Court had decided otherwise as to the law as it then stood (12 Kas. Rep. 531), the Legislature added to section 4 these words: "Copies of said notice to owners of lands, with affidavits of service attached, shall be filed in the county clerk's office *before said road shall be established;*" and the Supreme Court afterwards decided that these words had the effect of denying to the commissioners the power to order the road to be recorded unless the copies and affidavits had been filed. (23 Kas. Rep. 731, 732.) One more thing is necessary to the power to establish the road: there must be a certificate filed by the viewers, or the commissioners acting as viewers, stating their opinion in favor of or against the road, and setting forth their reasons for their opinion. (35 Ohio State Rep. 445, 446.)

Procedure.—Although the power exists, and everything necessary to jurisdiction has been done, the order establishing the road may still be *voidable*, though not *void*, because of irregularity in the proceedings of the commissioners, the clerk, the surveyor, the petitioners, or the viewers. The proceedings are laid down in the statute, and that statute must be substantially complied with. Nothing can be done but what the statute prescribes, nor in any other way than that which it lays down. (24 Ohio State Rep. 66.) To begin with, the record of the proceedings must show a *finding*—a *decision based upon some evidence*—that the petitioners are householders, or the whole proceeding will be void. (18 Kas. Rep. 132, 398.) If one of the viewers was not a householder, or was not disinterested—as, if he were one of the petitioners (13 Rhode Island Rep. 129); or if the viewers, or one of them, improperly behaved, in such a way as would be improper in a juror (49 Connecticut Rep. 229); or if the petitioners have bribed or "bought off" an opponent of the road (35 Ohio State Rep. 455); or if only two viewers acted,

the other not having been notified of his appointment (7 Ohio State Rep. 16; 8 Kas. Rep. 258)—all these and many other objections may be urged against the regularity of the proceedings. But the party contesting the road should appear before the commissioners when the matter is finally considered, and by affidavit or otherwise make the record, or the papers on file, show these outside facts, in order that they may be brought before the district court, if a petition in error should become necessary.

The Decision.—Objections to the final order establishing the road will be, either that the previous proceedings have been irregular, or that the board has no jurisdiction, or that the road will not be of public utility, or will work unnecessary inconvenience or hardship to some persons affected by it, or that the order itself is not sufficient in form. The legal objections have already been considered; and the other objections have been discussed in the chapter on "WHAT THE VIEWERS ARE TO DO." So that nothing further need be said here as to the grounds of contest.

THE MODE OF CONTEST.

Before the final order of the board, there can be no contest in court, but the conflict must be before the county commissioners (32 Kas. Rep. 507–509); for up to that time the commissioners have not accomplished anything. After the final order has been made, the party desiring to contest may take a general appeal, under section 1640 of the General Statutes of 1901, as a person "aggrieved" by the decision (18 Kas. Rep. 575); or he may obtain a complete transcript from the county clerk of the record and papers, and file a petition in error (24 Kas. Rep. 512, 513; 18 Kas. Rep. 129, 130); or, he may resist the road overseer when he seeks to open the road, and thus have himself arrested for obstructing a highway (23 Kas. Rep. 731, 734; 12 Ohio State Rep. 635, 636); or, he may sue the road overseer for trespassing when he has entered upon the land to open the road; or, which is the more usual course, he may bring a suit to enjoin the township trustee and road overseer from attempting to open the road through his lands. (32 Kas. Rep. 555; 28 Kas. Rep. 625; 26 Kas. Rep. 345; 18 Kas. Rep. 386–396.)

If a petition in error or an injunction suit be brought, the "principal petitioner" must be made a defendant to the petition or suit, and, perhaps, the county board also; but the "principal peti-

tioner" *must* be made a party, or the court will refuse to act. (24 Kas. Rep. 511; 30 Kas. Rep. 583.) Fuller discussion of these matters would lead into a wide field, and would not be proper in such a manual as this; besides, no prudent man will attempt to conduct his own suit, unless he be a lawyer, and it is even a proverb at the bar that a lawyer who manages his own case has a fool for a client. If a road is to be contested seriously, counsel should be employed at an early stage of the proceedings for that express purpose.

VIII.

ABANDONMENT OF ROADS.

It has been held that "unopened," in the statute declaring roads abandoned in certain cases (COLLATED ROAD LAWS, section 17), means simply roads authorized, but which have *never been* opened (30 Kas. Rep. 559; 19 Ohio Rep. 367); that a mere temporary abandonment of part of a road once opened, because of some obstruction, will not work a loss of the road under this statute; but there must be an evident intention by the public to wholly abandon the use of the road (30 Kas. Rep. 559; 28 Kas. Rep. 715, 721, 722); and that whenever all is done which the law and necessity require to be done in order to render the road open for public use, the road is not then an "unopened" road, within the meaning of the statute; and that when the road has been thus once legally opened, abandonment for ten years *afterwards* will have no effect. (30 Kas. Rep. 560, 561.) Thus, making an opening in fences for the road was held to be a sufficient opening of the road to prevent the application of this statute, although a tenant was given permission to put up bars for the protection of his crop until he could get it off. (59 Illinois Rep. 306, 310.) But, to prevent the operation of the statute as to abandonment, the *whole* road must have been opened; and it has been held that if it is clear that the whole road cannot be opened before the time prescribed in the statute shall have expired, the overseer may be enjoined from opening any part of it, though as yet the time has not expired. (34 Illinois Rep. 320.) Time consumed in litigation over the road, by appeals, injunctions or other means of contesting the right to establish it or the legality of the proceedings, is not to be counted as part of the period within which the road must be opened or become abandoned. So it has been elsewhere decided, and it seems reasonable and in harmony with the usual construction of similar statutes as to other matters. (38 Illinois Rep. 347.)

COLLATED ROAD STATUTES.

[N. B.—The main statute is chapter 108, Laws of 1874. The sections of that statute are here indicated by double section numbers, the numbers in brackets being the original numbers of the sections as they stand in the statute. At the end of each section is also given the section of the General Statutes of 1901. It was necessary to break up the original arrangement of the law, in order to group together the various kindred provisions. *Every section with a number in brackets belongs to the Road Law of 1874, either as it originally stood or as since amended.*]

PETITION AND BOND.

§ **1** [1]. That applications for laying out roads, or for viewing, re-viewing, altering, or vacating any road, shall be by petition to the board of county commissioners, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, viewed, re-viewed, altered, or vacated; and one or more of the signers of any petition presented as aforesaid shall enter into a bond with sufficient security, payable to the State of Kansas, for the use of the county, to be approved by the county commissioners, conditioned that the persons signing such bond shall pay into the treasury of the county the amount of all costs and expenses accruing on said location, view, re-view, alteration, or vacation; in case the proceedings had in pursuance of said petition shall not be finally confirmed and established, and on neglect or refusal of the persons so bound, after a liability shall have accrued, the county clerk of the county shall collect, or cause to be collected, such costs and expenses, and pay the same into the county treasury. (§ 6016.)

§ **2** [2]. All petitions for laying out or altering roads shall specify the place of beginning, the intermediate points, if any, and the place of termination of such road. (§ 6017.)

APPOINTMENT OF VIEWERS, AND PUBLISHING GENERAL NOTICE.

§ **3** [3].* Upon presentation of any petition for a road, or for

*The concluding section of chapter 411, Laws 1903, reads:

"SEC. 8. Sections 3, 5, 6, 7, 8, 9, 10 and 11 of chapter 108 of the Laws of 1874, being general sections 6018, 6020, 6021, 6022, 6023, 6024, 6025 and 6026 of the General Statutes of 1901, are hereby repealed; provided, that all roads for which a petition has been filed prior to the taking effect of this act shall be viewed, surveyed and opened in accordance with the provisions of chapter 108 of the Laws of 1874."

The act took effect from the publication of the Session Laws, June 1, 1903. Hence, where petitions were filed before June 1, 1903, the proceedings must be carried on as if the statute had not been amended.

the alteration or vacation of any road, to the county commissioners, at any regular session of their board, it shall be the duty of said commissioners, if they find the petition to be a legal one, and that the proper bond has been filed, to appoint three disinterested householders of the county as viewers † with said commissioners, who may act as viewers of said road, and the county clerk shall give notice by advertisement set up in the county clerk's office and in every municipal township through which any part of said road is designed to be laid out, altered, or vacated, for at least twenty days, and by publication for two consecutive weeks in a newspaper, if there be one, published in the county, setting forth that such petition has been presented, giving the substance thereof, and that the commissioners, or the viewers, [will] on the day designated, which shall not be more than twenty days after the date of the second publication in the newspaper of the notice herein required, proceed to view said road, and to give all parties a hearing. They shall also cause a record of such notice to be entered on their journal by the county clerk. They shall issue an order directing the county surveyor to meet with them at the time and place named in said notice to survey such road. In case of failure to meet on the day designated, they may meet on the following day, without further notice; and in case of failure to meet within the time herein specified, new notice shall be given as hereinbefore provided; that in all applications for the location, change and relocation of any road to be located upon or along any section line, and the petition shall so state, and shall specify the section lines to be followed, the place of beginning, and the place of ending, the survey may be dispensed with; and in case the owners of the lands taken agree in writing to the proposed location, relocation, or change, and the commissioners are satisfied that the location, relocation or change prayed for is practicable, and can be made without unreasonable expense, they may dispense with the viewing of such location, relocation or change of road, and shall order the same to be opened, and shall also direct the county clerk to note such location, relocation or change of roads upon the road records of his office. (§ 6018, as amended, Laws 1903, ch. 411, sec. 1.)

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† This is somebody's botch-work. The original bill read: "To appoint three disinterested householders of the county as viewers, *of* said commissioners may act as viewers of said road," *of* being evidently a printer's mistake for *or*. All the subsequent provisions of the new act, say "commissioners *or* viewers," and this is evidently the meaning. This clause must be read thus: "Appoint three dis interested householders of the county as viewers, *or said commissioners may act as viewers*, and the county clerk," etc. All the other provisions show this to be the meaning of this clause.

§ **4** [4]. It shall be the duty of at least one of the petitioners to cause six days' notice to be given in writing to the owner or owners, or their agents, if residing in the county, or if such owner be a minor, idiot or insane person, then to the guardian of said person, if a resident of the county, through whose land such road is proposed to be laid out and established, and also six days' notice to the county surveyor of the time and place of meeting, as specified in the notice of the commissioners. Copies of said notice to owners of lands, with affidavits of service attached, shall be filed in the county clerk's office before said road shall be established. (§ 6019.)

VIEW, SURVEY, CERTIFICATE, FINAL ACTION.

§ **5** [5]. It shall be the duty of the commissioners or said viewers, or a majority of them, and the county surveyor, to meet at the time and place specified in the notice aforesaid, or on the following day thereafter; and they may, if they deem it necessary, take to their assistance two suitable persons as chain-carriers and one as marker, and then proceed to view, survey, lay out, alter or vacate the road as prayed for in said petition, or as nearly so as a good road can be made at a reasonable expense, taking into consideration the utility, convenience, and inconvenience, and expense which will result to individuals as well as to the public, if such road, or any part thereof, shall be established and opened or altered. Said commissioners or viewers shall also assess and determine the amount of damages sustained by any person or persons through whose premises the said road is proposed to be established. Such commissioners or viewers shall not assess or award damages or compensation to any person or persons in consequence of the opening of said road, unless the owner or owners, or their agent or guardians, having been duly notified as provided in section 4 of the applications and proceedings by which their property is sought to be appropriated or damaged, shall have filed a written application with said commissioners [or viewers], giving a description of the premises on which damages or compensation are claimed, at the time of said view and hearing, as hereinbefore provided for: *Provided*, That in case any person has not received the notice of the view of said road, as provided for in section 4, he may at any time within twelve months after the location of said road file an application for damages with the county commissioners, who shall determine the amount of damages sustained by such claimant;

and all applications for damages shall be forever barred unless they are presented as provided for in this act. (§ 6020, as amended, Laws 1903, ch. 411, sec. 2.)

§ **6** [6]. If the commissioners or viewers, after viewing such proposed road, shall so direct, the surveyor shall survey the said road under their direction, and cause the same to be conspicuously marked throughout, noting the courses and distances. He shall also make out and deliver to the county clerk, without delay, a correct and certified return of the survey of the said road, and a plat of the same; and the said commissioners or viewers shall make out and sign a certificate stating their opinion in favor of or against the establishment, alteration or vacation of said road or any part thereof, and set forth the reason of the same, which certificate shall be filed with the county clerk on or before the first day of the session of the commissioners then next ensuing, and at such session next ensuing the said commissioners shall, if they conclude that said road should be established, altered, or vacated, and no legal objections appear against the same, and they are satisfied that such road will be of public utility, enter an order upon their records that said road, survey and plat be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order to the trustees of the respective townships in which said road is located, directing them to cause the same to be opened for public travel; but if the commissioners conclude that such road as applied for is unnecessary, then no further proceedings shall be had thereon, and the obligor or obligors in the bond securing costs shall be liable for the full amount of all costs accrued by reason of the view of said road. (§ 6021, as amended, Laws 1903, ch. 411, sec. 3.)

§ **7** [7]. It shall be the duty of the commissioners or viewers, at the same time they make their certificate of the view, to make also a separate certificate in writing stating the amount of damage, if any, by them assessed, and to whom, and submit therewith the written application upon which the assessments have been made. Any person feeling himself aggrieved by the award of damages made by the board of county commissioners may appeal from the decision of said board of county commissioners to the district court upon the same terms, in the same manner and with like effect as in appeals from judgments of justices of the peace in civil cases. (§ 6022, as amended, Laws 1903, ch. 411, sec. 4.)

RELOCATING ROAD.

§ **8** [8]. When the place of beginning or true course of any road shall be uncertain by reason of the removal of any monument or marked tree by which the road was originally designated, or from any other cause, the county commissioners shall constitute a board of review, or the county commissioners may appoint three disinterested householders of the county, and may re-view, re-mark and straighten said road, if they deem it necessary; and the county surveyor, with said commissioners or the viewers, shall view and resurvey the same, and shall have the same correctly marked, as in the case of new roads, and shall make a correct return of said survey and a plat of said road, and the same, together with the certificate of the commissioners or viewers, shall be recorded as in other cases, and from thenceforth said road, surveyed as aforesaid, shall be considered a public highway. (§ 6023, as amended, Laws 1903, ch. 411, sec. 5.)

ROAD ON COUNTY LINE.

§ **9** [9]. When it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the board of commissioners of their respective counties for a view of said road in the manner hereinbefore provided; and it shall be the duty of the board of commissioners for each of the counties interested to act as viewers, or they may appoint three disinterested householders of the county, and they or a majority of each of them shall meet at the time and place named in the order of the county interested as in alphabetical order, together with the surveyor of such county, and the commissioners or viewers and surveyor aforesaid shall assess all damages, and shall in all respects be governed by the preceding provisions of this act; and the commissioners or viewers and surveyor aforesaid shall make their report and certificate, in writing, for or against such road, which shall be filed and recorded in each of the counties as hereinbefore provided for. (Part of sec. 9, § 6024. As amended, Laws 1903, ch. 411, sec. 6.)

ROAD ON CITY LINE.

§ **10** [9]. And when it shall become necessary to establish a road on the line of any city, the board of commissioners of the county, together with three householders appointed by the corporate authorities of such city, shall act as a board of viewers, who shall proceed as di-

rected herein to lay off a road of the width that may be agreed upon by said commissioners and said corporate authorities, not to exceed eighty feet in width, half on the side of the city and the other half on the side of the county, or the county commissioners and the viewers appointed by the corporate authorities may act separately in laying off so much of said road as lies within their respective jurisdictions; and the certificate of said commissioners [and viewers] in regard to said road and the survey and plat of the same shall be filed and recorded as in other cases, and said road shall be opened in the manner hereinbefore provided for. (Part of sec. 9, § 6024. As amended, Laws 1903, ch. 411, sec. 6.)

WIDTH OF ROADS.

§ **11** [28]. The width of all county roads shall be determined by the viewers at the time of establishing the same, and shall not be more than eighty nor less than forty feet: *Provided*, That in cases where a growing hedge, or other permanent improvement, the removal of which would cause too great an expense, the viewers may determine the width of the road at not less than thirty feet; and in cases where a growing hedge or permanent improvement on or near one side of the proposed road precludes the road being laid equally on both sides of the line, the viewers may establish all or any part of said road on the side of the section line not incumbered by improvement. (§ 6043.)

PRIVATE ROADS.

§ **12** [29]. That whenever the premises of any person in this state shall be so completely surrounded by adjoining lands, the property of other persons, as to be without access to any public highway, then such person may petition the board of county commissioners of the county in which such premises lie for a road through some portion of the adjoining lands; and the board shall, on the presentation of such petition, proceed in accordance with the provisions of the foregoing sections to lay out such road, make returns of plats, and allow damages, if any should be held or allowed, provided said road shall not exceed twenty-five feet in width, and be laid out upon the section or half-section lines when practicable. (§ 6044.)

§ **13.** That when any landholder, who has no road or highway, desires the benefit of a road or highway, such person may petition the county commissioners of the county in which such person resides to

open a private lane or road to a public highway, when it shall be the duty of said commissioners to appoint three disinterested viewers to view and open a lane or road by the nearest and most practicable route to an established highway: *Provided*, That said lane or road shall follow or run parallel with some section or subdivision line; said road not to exceed two rods in width. (§ 6053.)

§ **14.** Said viewers shall assess all damages, when damages are claimed, and the road shall be declared opened when the damages, if any, are paid. (§ 6054.)

§ **15.** That no portion of the expense of viewing and locating roads under this act shall be chargeable to the county or state, but shall be paid by the person for whose benefit the road is located. (§ 6055.)

AVENUES, STREETS AND ALLEYS.

§ **16** [15]. All avenues, streets and alleys in cities, which are or may hereafter be laid out agreeably to law, shall be and the same are hereby declared public highways: *Provided*, That the municipal authorities of any incorporated city may make, ordain and enforce such ordinances concerning the sidewalks of the streets of such city as shall be deemed necessary to prevent such sidewalks from being used for the passage of horses, wagons and carriages, or hitching horses or other animals thereon.* (§ 6030.)

UNOPENED ROADS VACATED.

§ **17.** Any county road or part thereof, which has heretofore or may hereafter be authorized, which shall remain unopened for public use for the space of seven years at any one time after the order made or the authority granted for opening the same, shall be and the same is hereby vacated, and the authority granted for erecting the same is barred by lapse of time; and any State road or part thereof, which has heretofore or may hereafter be authorized, which shall remain unopened for public use for the space of ten years after the passage of the act authorizing the same, shall be vacated, and the authority for opening it repealed for non-use. (Id., § 6058.)

COMPENSATION OF VIEWERS, ETC.

§ **18** [11]. All persons required to render services under this act shall receive compensation for each day they shall necessarily be

* This section is still piously printed as part of the general road law, but to the editor it seems somewhat antiquated. He, however, also piously retains it for lack of right to eliminate it.

employed, as follows, to wit: On part of the board of county commissioners while acting in this capacity, three dollars each; viewers, two dollars each; chain-carriers and markers, one dollar and fifty cents each, to be charged as costs and expenses, and paid as other costs and expenses on order of the commissioners: *Provided*, That the surveyor shall be paid for his services in the manner prescribed by law.* (§ 6026, as amended, Laws 1903, ch. 411, sec. 7.)

OBSTRUCTION OF HIGHWAYS.

Natural or Accidental.

§ **19.** It shall be the duty of the road overseers of the several counties of this State to remove, or cause to be removed, at least once each year, between the fifteenth day of June and the fifteenth day of July, in the public highways, all cockle-burs, Rocky Mountain sand-burs, burdocks, sunflower, Canada thistles, and such other obnoxious weeds as may be injurious to the best interest of the farming community. (§ 6059.)

§ **20.** The road overseers in the several counties in this State are hereby directed to carry section one of this act† into effect, under the provisions of chapter one hundred and eight (108) of the Session Laws of eighteen hundred and seventy-four.‡ (§ 6061.)

§ **21** [27]. If at any time any highway shall be obstructed or become impassable, or any bridge shall be impaired so as to be unsafe, it shall be the duty of the overseer of the district in which such obstruction, impassable road or impaired bridge may be situated, to cause such obstruction to be removed, or such road or bridge to be repaired forthwith, for which purpose he shall order out such number of persons liable for road tax in his district as will be necessary to make said repairs; and every person so ordered out, who shall refuse or neglect to attend with the proper implements, or shall spend the time in idleness after reporting for labor, shall be liable to a fine of five dollars. (§ 6042.)

§ **22.** The township trustee may remove obstructions from the highways in cases where the road overseers shall refuse or fail to do so; and the trustee shall, such all cases, have all the power of road overseers in calling out the inhabitants to perform the work necessary to remove such obstruction. (§ 7784.)

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* See Gen. Stat. 1901, § 3047.
† The preceding section.
‡ The Road Law which constitutes the basis of this Manual.

§ **23.** The county commissioners are hereby authorized, whenever in their judgment the inconvenience to the public will not be too great, to allow any person through whose land a road is laid out to maintain convenient gates for a time sufficient to grow a hedge, not to exceed five years, in counties having a population of four thousand and over; and in counties having a population of less than eight thousand inhabitants, the county commissioners are hereby authorized, whenever in their judgment the inconvenience to the public will not be too great, to allow any person through whose land a road is or has been laid out to maintain convenient gates across said road for such length of time as such county commissioners may from time to time determine. (§ 6028.)

§ **24.** It shall be lawful for any owner, agent or lessee of any land not within the limits of any incorporated city, who may wish to grow a hedge or hedges on any land by or through which any public highway is now or may hereafter be located, to set his or their fence, as the case may be, out into any public highway or street any distance not exceeding eight feet from the side line of such public highway or street, and may continue to maintain such fence in such public highway or street for any time not exceeding five years from the time of setting such fence in such public highway or street: *Provided*, Such fence shall not remain in such highway or street more than two years, unless such person shall plant a hedge along the line of such public highway. (§ 3106.)

Slack Water Navigation Companies.

§ **25.** That in case any public highway shall be destroyed or obstructed by the flowage of any stream in consequence of the erection of any dam or dams, or otherwise, such corporation shall bridge such stream at the place or places where such highways have been destroyed, and maintain the same; and in case of partial destruction of such highway, the said highway shall be repaired, and maintained as a good, passable highway by such corporation. (Proviso, § 1451.)

Railway Companies.

§ **26.** Every railway corporation shall * * have power: * * *Fourth*, To construct its road across, along or upon any * * highway * * which the route of its road shall intersect or touch; but the company shall restore the * * highway * * thus inter-

sected or touched to its former state, or to such state as to have not necessarily impaired its usefulness. (§ 1316.)

§ 27. It shall be the duty of each and every railway company or corporation owning, controlling or operating any line of railroad within this state to construct and keep in repair, at each crossing of any regularly laid out public highway, a good and substantial crossing, by securing on each side of each rail a board not less than twelve feet long and not less than ten inches wide and two inches thick, and shall fill the space between the two inside boards with gravel or broken stones, or shall floor the space with boards not less than two inches thick and twelve feet long. (§ 5869.)

Telegraph Companies.

§ 28. Corporations created for the purpose of constructing and maintaining magnetic telegraph lines are authorized to set their poles, piers, abutments, wires and other fixtures, along, upon, and across any of the public roads, streets and waters of this state, in such manner as not to incommode the public in the use of such roads, streets and waters. (§ 1342.)

Telephone Companies.

§ 29. All such corporations shall have all the rights and powers conferred, and be subject to all the liabilities and duties imposed by the general laws of this state upon telegraph corporations. (§ 1252.)

[*Pipe-lines for Natural Gas* may be laid in public highways. A pipe-line is merely a means of transportation. (*State v. Kansas Natural Gas &c. Co.*, 80 Pac. Rep. 962.)]

Moving Steam Machinery Over Highways.

§ 30. All persons, owning, controlling, operating or managing steam threshing machines, saw mills, or steam traction engines of any kind, in moving the same over the public highway, are required to lay down planks not less than one foot wide, three inches in thickness, and of sufficient length, on the floor of all bridges and culverts situate on the public highway, while crossing the same, for the wheels of said engine of any kind to run on while crossing such bridge or culvert: *Provided,* That this section shall not apply to any machine or engine not exceeding one ton in weight. (§ 2378.)

§ 31. All persons owning, controlling or operating or managing steam traction engines of any kind, in moving the same along the public highway, are required on meeting any person or persons in vehicles of any kind, drawn by horses, mules or other animals, to turn to the right, giving as much of the public highway as possible,

and then shut off the steam and come to a halt at the distance of one hundred yards from the person or persons so met, and to remain with the steam down and halted until said person or persons shall have passed at a distance of one hundred yards from the place of halting on said highway: *Provided*, That nothing in this section shall prevent anyone operating such engine drawing the same by team or teams without making the halt or halts above referred to. (§ 2379.)

§ **32.** Any person or persons owning, controlling, operating or managing any steam traction engine shall, in passing through any village, town, or city, attach a team thereto for the purpose of assisting in drawing the same. (§ 2380.)

§ **33.** Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction therefor, be fined in a sum of not less than five dollars nor more than two hundred dollars for such offense. (§ 2381.)

Unlawful.

§ **34** [17]. If any person shall willfully demolish, throw down, alter or deface any milestone or guideboard on or at the forks of any roads, or shall willfully obstruct any such road by any means or in any manner whatever, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and be punished by imprisonment in the county jail not exceeding three months, or by fine of not less than twenty nor more than one hundred dollars, or by both such fine and imprisonment, which fine shall be paid by the officer receiving the same into the county treasury for school purposes. And every person obstructing any such road as aforesaid shall also be liable in a civil action for all damages sustained by any person who has in any manner whatever been damaged by reason of such obstruction. (§ 6032.)

§ **35.** Every person who shall willfully or maliciously break, destroy, or remove any milepost, milestone, or any guideboard, erected by authority of law on any public highway or road, or shall willfully and maliciously deface or alter any inscription on any such post, stone or board, shall be deemed guilty of a misdemeanor. (§ 2104.)

§ **36.** It shall be unlawful for any person or persons to hereafter plow up the public highways for the purpose of scouring plows, or for any other purpose, except it be under the direction of the overseer

of public highways; and any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act, in a sum not exceeding ten dollars nor less than three dollars, with cost of suit. (§ 6060.)

§ **37.** Any person being the owner of any domestic animal or animals, or having the same in charge, who shall turn out or suffer any such domestic animal or animals having any contagious or infectious disease, knowing the same to be so diseased, to run at large upon any inclosed land, common or highway, or shall let the same approach within one hundred feet of any highway, or shall sell or dispose of any domestic animal or animals, knowing the same to be so diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any amount not exceeding five hundred dollars, and imprisonment in the county jail not more than six months. (§ 2331.)

§ **38.** Any person violating any of the provisions of this act, in addition to the penalties therein provided, shall be liable for all damages that may accrue to the party damaged by reason of said diseased animal or animals imparting disease. (§ 2332.)

§ **39.** If any person shall run or cause to be run upon any public road or highway in common use in this state, any horse or horses, so as to interrupt travelers thereon, or put to fright the horses or other animals by them rode or driven, he shall upon conviction be adjudged guilty of a misdemeanor, and punished by fine not less than five nor more than twenty dollars. (§ 2267.)

§ **40.** If more than two persons shall run or cause to be run a match horse-race in any public road in common use, for the purpose of trying the speed of their horses, every person so offending shall upon conviction be adjudged guilty of a misdemeanor, and punished by fine not less than five nor more than twenty dollars. (§ 2268.)

§ **41.** If any person or persons shall put any part of the carcass of any dead animal into any river, creek, pond, road, street, alley, lane, lot, field, meadow or common; or if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places, to the injury of the health or the annoyance of the citizens of this state or any of them, every person so offending shall on conviction thereof before any justice of the peace of the county be fined

in a sum not less than one dollar nor more than twenty-five dollars; and every twenty-four hours during which said owner may permit the same to remain thereafter shall be deemed an additional offense against the provisions of this act. (Id., § 2354.)

§ **42.** That each and every railroad company, or any corporation leasing or otherwise operating a railroad in Kansas, are hereby prohibited from allowing their trains, engine or car, to stand upon any public highway, crossing, street, or alley, in any unincorporated town to exceed ten minutes at any one time. (Id., § 5953.)

§ **43.** Any person or employé of any railroad company or corporation operating a line of railroad in Kansas failing or neglecting to comply with section one of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than three hnndred dollars, or by imprisonment in the county jail not to exceed ninety days. (Id., § 5954.)

PROVISIONS FOR PUBLIC SAFETY AND CONVENIENCE.

§ **44** [14]. Each overseer within his district shall erect and keep up, at the expense of the township, posts and guideboards at the forks of every state and county road, containing an inscription in legible letters, directing the way and naming the distance to such cities as are situated on said road; and any road overseer failing to do so in a reasonable time, not to exceed six months, shall, upon conviction thereof before any justice of the peace of the proper county, be fined in any sum not exceeding five dollars, with costs of suit; and such fine, when collected, shall be paid into the county treasury for school purposes. (Id., § 6029.)

§ **45** [31]. It shall be the duty of the township trustees of the several townships in each county of this state, to cause to be put up and kept in good repair at each end of each and every bridge erected by the county upon any highway in their respective townships, of a span of not less than twenty-five feet, a notice, which shall be printed in conspicuous letters, with the following words: "Five dollars fine for riding or driving over this bridge faster than a walk." (Id., § 6046.)

§ **46** [32]. It shall be unlawful for any person or persons to ride or drive any horse, mule, ass or ox over any such bridge in this state faster than a walk, or drive more than fifty head of cattle on such bridge at one time; and any person who shall so unlawfully ride or drive such horse, mule, ass or ox over such bridge, or drive over the

same more than fifty head of cattle at any one time, upon conviction thereof shall pay a fine of five dollars, and costs of suit. (§ 6047.)

§ 47. Each road overseer, within his district, shall erect and keep up, at the expense of the township, posts or boards at the fords of every river or creek that in high water becomes impassable; which posts shall be set at or near low-water mark, on which shall be inscribed in legible letters, or plain figures, the depth of water at low water, together with a scale of feet showing the scale of feet above low-water mark to the height which said stream is known to have risen. (§ 6056.)

§ 48. Every railway corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained, across each traveled public road or street, when the same is crossed by the railway on the same level. Said board shall be elevated so as not to obstruct the travel, and to be easily seen by travelers; and on each side of such board shall be painted in capital letters, "Look out for the cars." But this section shall not apply to streets in cities or towns, unless the corporation shall be required to put up such boards by the city or town authorities, or the officer having charge of such streets. (Id., § 1324.)

§ 49. No road overseer in this State shall make or cause to be made any ditch more than two feet deep without the consent and approval of the commissioners of roads and highways; and in any case where a ditch one foot deep or more shall be made in front of any residence property, the road overseer shall construct and maintain a bridge or culvert at the usual entrance connecting said residence property with the public highway so as to make a good and substantial crossing over any ditch so made. (Session Laws 1905, ch. 362, § 6.)

*Destruction of Noxious Weeds.**

§ 50. Every person and every corporation shall destroy, on all lands which he or it may own or occupy, all weeds of the kind known as Russian thistle and Canadian thistle, at such time as the board of county commissioners may direct; and notice shall be published in one or more county papers for a time not less than three weeks before the time fixed upon for the destruction of said noxious weeds. (Gen. Stat. 1901, § 7910.)

* See also, section 61.

§ 51. It shall be the duty of the county commissioners to fix the time for the destruction of all such noxious weeds, and to provide for the destruction in such a manner as to prevent their bearing seed. (Id., § 7911.)

§ 52. Every overseer of highway of every township or county shall also, at the same time in like manner, destroy all such noxious weeds, either on the highways of his road district, railroad right-of-way, or on any unoccupied land therein, upon which the owner or lessee thereof shall neglect or refuse so to do; and for such service overseers of highways or persons employed by him shall receive as compensation the sum of one dollar and fifty cents per day, or three dollars per day for man and team, to be paid out of the general county fund: *Provided,* The limitation of time, as provided in paragraph 5506 of section 33, Laws of 1889,* in relation to road overseers, shall not apply to the provisions of this act. (Id., § 7912.)

§ 53. It shall be the duty of the overseers of highways to present to the board of county commissioners an itemized account, verified under oath, showing description of each piece of land upon which noxious weeds have been destroyed, in accordance with the provisions of this act, and the amounts of the charge for such service, by separate items; and said amount shall become a lien against the lands so described, except in case of the destruction of such noxious weeds on the public highways. The amount of cost of the destruction of such noxious weeds as so certified shall be placed upon the next tax list in a separate column, headed, "For the destruction of noxious weeds," as a tax against the land upon which such noxious weeds were destroyed, subject to all the penalties thereof, and to be collected as other taxes; and the entry of such tax upon the tax list shall be conclusive evidence. (Id., § 7913.)

§ 54. It shall be the duty of all overseers of highways to certify to the county clerk in an itemized account, verified by oath, the amount of labor performed in destroying such noxious weeds on all lands not public highways, on or before the fifteenth day of September in each year. (Id., § 7914.)

§ 55. Any railway company which shall be notified by any road overseer or township trustee, in writing, through its agent, section

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* Section 109 of this compilation.

foreman, or road master, that the noxious weeds referred to in this act are growing upon the said company's right-of-way or other lands, which writing shall designate the location of said growing weeds, then the said company shall forthwith destroy the same; and failure so to do shall subject said company to the penalties imposed by section 8 of this act.* And in case of such notice having been served upon any railroad company, and ten days having elapsed without the destruction of said noxious weeds, then it shall be the duty of the road overseer, within whose district said right-of-way or other lands may be upon which said noxious weeds are growing, to proceed to enter upon said right-of-way or land as the case may be, and destroy the noxious weeds there growing; and for such service he shall be allowed one dollar and fifty cents per day, and the same shall be paid out of the county fund, and taxed against such offending corporation or corporations. The amount of such tax shall be added by the county clerk to the railroad company or corporation on the tax-roll against such company or corporation, and collected as other taxes are collected against such company. (Id., § 7915.)

§ 56. It shall be the duty of the county clerk to enter upon the tax list, in a separate column for that purpose, headed, "For the destruction of noxious weeds," an amount equal to the cost of such labor as a tax against all lands not public highways upon which such noxious weeds are destroyed. (Id., § 7916.)

§ 57. If the owner or occupant of any such lands, or the overseer of any highway, or the board of county commissioners in any county of this state, shall fail to comply with any of the requirements of this act, they shall be guilty of a misdemeanor: *Provided*, If any county attorney shall fail or refuse to prosecute, then the court in which the complaint was brought or pending may appoint some reputable practicing attorney to conduct such prosecution, who shall in such event receive the fees provided for such cases. (Id., § 7917.)

§ 58. The county attorney shall be liable under his bond for any failure to comply with the provisions of this act. (Id., § 7918.)

§ 59. Notices to the owner of the land provided to be given under the provisions of this act shall be made in the same manner as summons in the district court. (Id., § 7919.)

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* Section 57 of this manual.

Hedges.

§ 60. That owners of real estate in any county in the state of Kansas shall keep all hedge fences along the public highway cut and trimmed down to not over five feet high, except trees not less than sixteen feet apart and hedges necessary as a protection to orchards, vineyards, and feed-lots; said feed-lots not to extend more than forty rods. All brush cut from said hedges shall be cleaned up and removed or burned. (Id., § 3116.)

§ 61. All owners of real estate shall cut the weeds in the public highway along said real estate, before they go to seed. (Id., § 3117.)

§ 62. Upon a petition being presented to the county commissioners of any county, signed by a two-thirds majority of all the members of township boards in said county, they shall by proclamation, call an election to be held at a general election for township and county officers, and shall submit to the electors the question to adopt or reject the law for cutting hedges, and upon the ballots shall be written or printed: "For the hedge law;" "Against the hedge law," under the provisions of the general elections law, and the judge of election shall count the ballots cast for and against the "hedge and weed law," and make due returns of the same to the county commissioners, as other returns are required by law to be made; that said commissioners shall meet within ten days, and with the clerk of the county shall proceed to count said votes, and declare the results in a proclamation to be published two weeks in some newspaper in general circulation in the county in which such proclamation is made. If a majority of the votes are for such law, they shall declare said law to be in full force and effect, and shall state the day on which the same shall take effect, not longer than two weeks from the date of the election; and from and after such date, the provisions of this act shall be in full force and effect. All laws in conflict with the provisions of this act are hereby repealed. (Id., § 3119.)

§ 63. Nothing in this act shall be construed as to extend its provisions to any county, until after the election provided for in the preceding section. (Id., § 3120.)

§ 64. That whenever any county shall fail to cast a majority of its vote for the "hedge law" the county commissioners may annually thereafter submit the same questions to the electors of their respect-

ive counties, in the same manner as provided in section four of this act,* and declare the results as herein provided. (Id., § 3121.)

§ 65. In any county where the provisions of this act shall be adopted, any owners of real estate failing to comply with its provisions, it shall be the duty of the road overseer in the district in which such real estate is located to give thirty days' notice to the owner of said real estate or his or her duly authorized agent, and upon his or her failing to comply with this act, said road overseer shall cut or cause to be cut such hedge not more than five feet high, or shall cut or cause to be cut said weeds in the public highway along said real estate, as is provided in this act; and the cost of cutting said hedge or said weeds shall be reported to the county clerk of said county and the same entered on the tax-rolls against the said real estate and collected as other taxes of the county are collected, and paid over to the treasurer of the proper township. (Session Laws 1905, ch. 363, § 1.)

RESOURCES FOR IMPROVING AND REPAIRING ROADS.

Road Labor.

§ 66. [18]. All male persons between twenty-one and forty-five years of age, who have resided thirty days in this state, who are capable of performing labor on public highways, and who are not a township charge, shall be liable each year to perform two days' work of eight hours each on the public roads, under the direction of the road overseer within whose district they may respectively reside, or furnish a substitute to do the same, or pay the sum of one dollar and fifty cents per day to said road overseer, who shall receipt for the same, and expend it in repairs on the public roads within his district; and any moneys so received and not expended shall be paid over to his successor in office, who shall expend the same as above provided. (Gen. Stat. 1901, § 6033.)

§ 67. [19]. The overseer of highways in each road district shall give a notice to persons residing in his district liable to or charged with a road tax, of the time and place he will attend and direct the work to be performed, as aforesaid. The overseer may direct what implements such person shall bring with which to perform such work. (Id., § 6034.)

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* Section 62 of this manual.

§ **68.** [20]. Whenever it shall happen, in consequence of sickness or absence from home, or any other cause, that the two days' work aforesaid shall not be performed within the time specified in this act, the overseer shall be authorized to require the performance of such work at any time prior to the first day of October then next ensuing; and in case any person shall neglect or refuse to do the two days' work or furnish a substitute, or pay the said sum of one dollar and fifty cents per day, as provided in this act, he shall be deemed guilty of a misdemeanor, and shall be fined in the sum of five dollars for such refusal so to work, upon conviction before any justice of the peace of the township. If any person shall appear at the proper time and place as directed by the overseer, and neglect or refuse to do a reasonable day's work, according to his ability, he shall be liable the same as if he neglected or refused to appear or furnish a substitute or pay the said sum of money as provided herein. (Id., § 6035.)

Convict Labor.

§ **69.** It shall be unlawful to allow any convict in the penitentiary to perform any labor for private citizens outside of the penitentiary grounds for hire or otherwise, and it shall be the duty of the warden to employ the surplus convict labor in extending and repairing the state and county roads, and upon other works exclusively for the benefit of the state. (Session Laws 1905, ch. 42, § 5.)

§ **70.** That the board of county commissioners of any county in this state may, whenever they may deem it advisable so to do, properly shackle and work, under such rules and regulations as they may from time to time ordain and establish, each and every male prisoner committed to the jail of their respective counties for failing to pay the fine and costs adjudged against such prisoner on his conviction and increased costs, and also any male person failing to pay the costs adjudged against him as the prosecuting witness in any criminal proceeding. (Gen. Stat. 1901, § 5799.)

§ **71.** That the board of county commissioners may establish a county stoneyard, and work male prisoners mentioned in the first section of this act at breaking stone for use in macadamizing streets and roads, under such rules as they may from time to time ordain and establish. (Id., § 5800.)

§ 72. That the board of county commissioners of the proper county are authorized to sell or dispose of such stone as they may have had broken on such terms as they may deem advisable, or in case they cannot sell the same, to use the same for the improvement of some designated road or street; and on making a sale of such stone, the money arising therefrom shall be used to pay for stone delivered at the county stoneyard, and the remainder shall be applied to the payment of the fine and costs standing against the person breaking the same. (Id., § 5801.)

§ 73. In case when a prisoner shall so desire, and shall enter an undertaking to the proper county, with good and sufficient sureties, to be approved by the county clerk, that he will do a given or specified amount of work on some highway designated by the chairman of the board of county commissioners of the proper county, and in a specified time, in full satisfaction of the said fine and costs charged against the said prisoner, the chairman of the board of county commissioners of the proper county is authorized to accept such undertaking, and direct the jailer to allow such prisoner to leave said jail for the purpose of doing the specified work. Said work may be done under the direction and control of some road overseer designated by the chairman of the board of county commissioners of the proper county; and when said work is done or performed in the manner and in the time designated in said undertaking, the chairman of the board of county commissioners shall so certify on said undertaking, and said prisoner shall then be discharged from all liability for the fine and costs for which he was imprisoned: *Provided,* For any good and sufficient reason the chairman of the board of county commissioners may extend the time for doing the work specified in such undertaking. (Id., § 5802.)

§ 74. In case the prisoner entering into the undertaking shall fail or neglect to do or perform the work or labor specified in the undertaking so given by him, the county attorney shall at once proceed to collect the amount specified in such undertaking, and no defense, except payment or the death of the principal in the undertaking during the time in which such principal was to do such work, shall be allowed. (Id., § 5803.)

§ 75. Prisoners shall be allowed one dollar for each day's work performed by them in good faith under the provisions of this act, or

if the prisoner prefer, the board of county commissioners may allow such prisoner a specified sum per cubic yard for breaking stone. The amount so earned by the day or by the cubic yard, when the same shall amount to the sum of the fine and costs, the same shall be deemed a full satisfaction of the fine and costs in the action for which the said prisoner was committed to the jail of the county. (Id., § 5404.)

§ 76. The county shall not be liable for any costs by reason of the provisions of this act, otherwise than as herein provided, nor shall this act be construed as limiting the board of county commissioners of any county in their right to discharge any person from the jail in the manner as now provided by law. (Id., § 5805.)

*Damages Received from Railroad Companies.**

§ 77. Whenever, by the construction of any railroad within this state, the crossing of any public highway has been or shall be materially injured, either by excavation or embankments made by said railway company or corporation in the construction of said road, and the said railway company have failed to make good the said crossing, and continue to fail to do so for the space of ninety days after the taking effect of this act, it shall be the duty of the township trustee of the proper township to notify the board of county commissioners of the fact, stating the location of the crossing, the manner in which the crossing has been injured, obstructed or destroyed, verified by affidavit of at least three of the resident taxpayers of said township. Thereupon it shall be the duty of the board of county commissioners to appoint three disinterested householders of the county to view the said crossing and assess the damages resulting thereto from the construction of said railway, and shall designate the time of meeting, and shall notify the railway company by written notice, not less than ten days previous to said meeting, to any agent or attorney of said railway company, of their action, stating the time and place at which the said viewers will meet to view the crossing, and assess the damages resulting therefrom. (Laws 1876, ch. 105, § 3.)

§ 78. The viewers appointed under the provisions of the third section of this act shall meet on the day designated, and shall, from

* See 36 Kan. Rep. 628, that this act can apply to only recently constructed railroads.

actual view, assess the amount of damages resulting to the highway by the construction of said railway; which amount shall not be in excess of the amount of money necessary in their judgment to construct a good crossing, and costs of suit, including the necessary approaches thereto, and shall return to the township trustee a certificate under oath of the amount of damages by them assessed. (Laws 1876, ch. 105, § 4.)

§ **79.** It shall be the duty of the township trustee, immediately upon the filing with him of said certificate, to notify the railroad company, by written notice to any agent or attorney of said road, of the amount of damages assessed against it, and demand the payment of the same; and on failure of the company to pay the amount so assessed for the period of thirty days thereafter, he is authorized to commence an action in any court of competent jurisdiction for the recovery of the amount of damages as aforesaid; and the certificate of the viewers shall be *prima facie* evidence of the amount of damages sustained. (Laws 1876, ch. 105, § 5.)

§ **80.** All moneys received under the fifty-fourth section of this act shall become a part of the township fund of the township where the damage was sustained, and shall be used under the direction of the road overseer for making good the damages to the public highway, sustained by reason of the building of said railroad. (Laws 1876, ch. 105, § 6.)

Township Road Taxes.

§ **81.** For the purpose of carrying out the provisions of this act,* the commissioners of roads and highways shall recommend to the county commissioners of each county in this state, on or before the first day of August of each year, a levy of not more than five mills on the dollar on all the property in such township; and it shall be the duty of the county clerk to place said levy on the tax rolls of said county: *Provided,* That no provision of this act shall be construed to supersede any special act. (Session Laws 1905, ch. 362, § 8.)

§ **82.** [26]. The township treasurers shall receive from the county treasurers the road taxes paid within their respective townships. (Gen. Stat. 1901, § 6041.)

* Ch. 362, Session Laws 1905 — Highway Commissioner Law.

Optional Labor or Money Taxes.

§ 83. All taxes assessed for the purpose of constructing and maintaining public roads and highways shall be paid in cash, and collected as provided for in relation to other taxes; and when so collected, the county treasurer shall pay the same to the treasurer of the township or city from which said taxes are collected, to be used exclusively for road purposes; unless the commissioners of roads and highways shall, when they meet to recommend the levy of the tax provided for in this act, adopt a resolution that the same shall be paid in work, in which case such tax shall be worked out under the direction of the commissioners of roads and highways, as hereinafter provided. (Session Laws 1905, ch. 362, § 2.)

§ 84. Whenever it shall have been determined, as hereinbefore provided, that said tax may be paid in labor, the county clerk shall, on or before the first day of January next after said tax shall have been levied, furnish to the commissioners of roads and highways, in the township in which such tax shall have been levied, a list of all taxable real estate and persons charged with taxes on personal property, within their respective townships, and the amount of road tax chargeable to each tract or person. The said tax may then be paid in labor under the direction of the commissioners of roads and highways of the township in which the property is situated, by any able-bodied man at the rate of one dollar and fifty cents per day, and the same amount shall be allowed for a two-horse team and wagon or a team and plow. It shall be the duty of the commissioners of roads and highways to receipt to each person who performs labor on public highways, in their township, under the provisions of this act, for the amount of labor so performed, and such receipt shall specify the land or lands or the persons for which such labor was the payment of road tax. Such receipt shall be received by the county treasurer in payment of road taxes charged against the lands or persons described therein for the year; and all road taxes in townships where the same may be paid in labor, as hereinbefore provided, which remain unpaid on the 15th day of September shall be returned to the county clerk, who shall charge the same against the respective lands, lots or personal property on the county tax roll for the current year. (Id., § 3.)

§ 85. Nothing in this act shall be so construed as to prevent the requiring of each male resident between the ages of twenty-one and forty-five years from performing two days' labor on the highway, as now provided by law. (Id., § 7.)

EIGHT-HOUR WORKING DAY.*

§ 86. That eight hours shall constitute a day's work for all laborers, workmen, mechanics or other persons now employed or who may hereafter be employed by or on behalf of the state of Kansas, or by or on behalf of any county, city, township or other municipality of said state, except in cases of extraordinary emergency which may arise in time of war or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life: *Provided,* That in all such cases, the laborers, workmen, mechanics, or other persons so employed and working to exceed eight hours per day shall be paid on the basis of eight hours constituting a day's work: *Provided further,* That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics and other persons so employed by or on behalf of the state of Kansas, or any county, city, township or other municipality of said state; and laborers, workmen, mechanics, and other persons employed by contractors or sub-contractors in the execution of any contract or contracts within the state of Kansas, or within any county, city, township or other municipality thereof, shall be deemed to be employed by or on behalf of the state of Kansas, or of such county, city, township or other municipality thereof. (Id., § 3827.)

§ 87. That all contracts hereafter made on or on behalf of the state of Kansas, or by or on behalf of any county, city, township or other municipality of said state, with any corporation, person or persons, for the performance of any work or the furnishing of any material manufactured within the state of Kansas, shall be deemed and considered as made upon the basis of eight hours constituting a day's work; and it shall be unlawful for any such corporation, person or persons to require or permit any laborer, workman, mechanic or other person to work more than eight hours per calendar day in

* This act is constitutional: *In re Dalton*, 61 Kan. Rep. 257. And it applies to work on the public highways in working out poll tax: *In re Ashby*, 60 Kan. 101.

doing such work or in furnishing or manufacturing such material, except in the cases and upon the conditions provided in section 1 of this act. (Id., § 3828.)

§ 88. That any officer of the state of Kansas, or any county, city, township or other municipality of said state, or any person acting under or for such officer, or any contractor with the state of Kansas, or any county, city, township or other municipality thereof, or other person violating any of the provisions of this act, shall for each offense be punished by a fine of not less than $50 nor more than $1,000, or by imprisonment not more than six months, or both fine and imprisonment, in the discretion of the court. (Id., § 3829.)

ROAD DISTRICTS AND ROAD OVERSEERS.

§ 89. The commissioners of roads and highways shall have authority to divide their respective townships into not more than four road districts, with power to change the number and boundaries of the same not to exceed four in number, and shall appoint one road overseer for each district; and they are hereby authorized to appoint one or more road overseers, as necessity may require, who shall serve for a term of two years, unless discharged for cause by said commissioners of roads and highways, and shall receive a salary of two dollars per day for each day's actual service, for as many days each year as said commissioners may direct. (Session Laws 1905, ch. 362, parts of §§ 5 and 1.)

§ 90. The duties of the township trustee shall be: . . . *Fifth,* to cause a record to be made, accurately defining the boundaries and number of each road district, as well as all alterations made in such road district or districts, in his township, and the number of road overseers in each township. (Gen. Stat. 1901, § 7778.)

§ 91. [16]. Each incorporated city of more than six hundred inhabitants shall constitute a separate road district, and the corporate authorities of such corporation shall have power to appoint a road overseer for such corporation, fix his term of office and compensation, and remove him from office for any misconduct, and shall require him to give bond, with good security, to the proper corporation for the faithful discharge of his duties, and for the safe-keeping and proper use of any money that may come into his hands, and to disburse the same in the manner directed by the corporation; and such

overseers shall do and perform all the duties in the same manner and under the same instructions and limitations as are provided for the government of overseers in this act, except as herein otherwise provided; and the said corporate authorities of any such city are authorized and empowered to use the two days' work provided for in this act, or the money paid by persons in the discharge of the same, in paving, macadamizing or grading the streets or alleys in such city in any manner provided by ordinance or resolution of any such corporation: *Provided,* Such work or money shall be applied first to the most public streets not macadamized or graded, and that the work required to be done as provided for in this act shall be done between the 1st day of April and the 1st day of October of each year; and any such city shall have the power to pass any by-law or ordinance necessary to carry out fully the provisions of this act. (Id., § 6031.)

TOWNSHIP COMMISSIONERS OF HIGHWAYS.*

Created.

§ 92. The township board, consisting of the township trustee, clerk and treasurer of each municipal township of this state, shall be and the same are hereby made commissioners of roads and highways of their respective townships; and all roads shall be under the direct control of the township commissioners of roads and highways except incorporated cities of more than 600 inhabitants; and they are hereby authorized to appoint one or more road overseers as necessity may require, who shall serve for a term of two years unless discharged for cause by said commissioners of roads and highways, and shall receive a salary of two dollars per day for each day's actual service for as many days each year as said commissioners may direct. (Session Laws 1905, ch. 362, § 1.)

Powers and Duties.

§ 93. Said commissioners of roads and highways shall have entire control and general supervision of all roads and highways in their respective townships; and all tools, implements and road machinery, together with all materials for the construction of culverts and bridges, shall be purchased by the commissioners of roads and highways. And

* Because of the principles announced by the Supreme Court in *The State v. Guiney*, 55 Kan. 532, and in *The State v. Sholl*, 58 Kan. 507, as well as some other principles of constitutional law, I have had serious doubts as to the constitutionality of this law. But I have concluded that humble folk, like the editor of this

such commissioners are hereby empowered to let by contract to the lowest responsible bidder any road work in their township where they deem it advisable to do so, after first having given due notice of the letting of such contracts: *Provided, however,* That said commissioners, or any of them, shall not be financially interested in any said contract. (Session Laws 1905, ch. 362, § 4.)

§ 94. The board of commissioners of highways, mentioned in this act, shall each receive for their services the sum of two dollars per day for the time actually and necessarily spent by them as such commissioners. (Gen. Stat. 1901, § 7829.)

Powers and Duties as to Fire-guards.

§ 95. The board of commissioners of highways in each township in counties in Kansas having a population of less than five thousand are authorized to establish and maintain fire-guards in their respective townships for the purpose of preventing the spread and incursion of prairie fires therein, whenever a petition signed by a majority of the qualified electors of their respective townships shall be presented to them requesting them to establish fire-guards; and they shall alter, change or annul any fire-guards so established when requested to do so by a petition signed by a majority of the qualified electors of their respective townships. (Id., § 3141.)

§ 96. The fire-guards, when practicable, shall be made upon the

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modest work and the people he advises, are not bound to guess in advance what the Supreme Court will decide; that the Legislature having enacted a law, the only safe course for common folk is to act upon the assumption that it is valid; leaving greater personages to question its validity. So I have inserted the act of 1905. If I am in error in treating it as valid, the Supreme Court will in due time rectify my error. The law is a good one, and I hope to see it sustained; but for the time being, at any rate, inferior executive officers should treat it as law.

Treating it as law, there comes the embarrassing question — What does it repeal? The old law related to both a board of township highway commissioners and a township auditing board. This law relates to a board of highway commissioners alone. It does not, therefore, cover the entire subject-matter (*State v. Studt*, 31 Kan. 245; *State v. Guiney*, 55 Kan. 532; *Gilbert v. Craddock*, 67 Kan. 346); and, hence, cannot be regarded as a repeal by substitution. We must treat it as a repeal by implication as to particular sections and particular provisions. And it does not affect at all the law as to township auditing boards, for it does not relate to that subject. It does, however, repeal the former law as to township highway commissioners entirely, for it is plainly intended to be the only law on that subject. I have proceeded on the ideas just advanced in leaving in or omitting previous provisions. Only future decisions of the Supreme Court can determine the wisdom or unwisdom of my course. I am compelled to choose *some* course.— THE EDITOR.

highways along such section lines as may be considered best, and shall consist of two plowed strips six feet wide along the sides of the public highways, but upon the same, with the vegetation between such plowed strips burned off during the fall of the year, if deemed advisable: *Provided, however*, That fire-guards may be located upon any other land whenever the consent of the owner or owners thereof may be obtained without any compensation. (Id., § 3142.)

§ **97.** The board of commissioners of highways of any two townships may arrange to jointly establish and maintain a fire-guard along the boundary line between such two townships. (Id., § 3143.)

§ **98.** In addition to the duties already imposed upon them by law, the road overseers in each township where this act shall apply shall, between the 1st day of May and the 1st day of October of each year, cause to be plowed the two strips of land as set forth in section 2 of this act, upon all fire-guards established and located within their respective road districts, and shall cause to be plowed one strip on all fire-guards located upon the line which divides their district from some other road district; and thereafter, during the summer, when so directed by the board of commissioners of highways of their townships, shall cause said strips of land to be cultivated or replowed, so as to practically keep such strips free and clear of all vegetation; and during the fall of the year, when so directed by said board, shall burn off the grass and vegetation between such plowed strips. (Id., § 3144.)

§ **99.** The road overseer in each township where this act shall apply may require each person subject to perform two days' labor upon the public highways (generally known as a poll tax) to perform such labor upon the fire-guards, and two days' labor so performed shall be in full satisfaction of such person's poll tax for that year. (Id., § 3145.)

§ **100.** Under the direction of the board of commissioners of highways, the road overseer may employ such additional help as may be required in order to make and maintain fire-guards as herein provided, and shall keep in a book to be provided by said board a full and complete list of all persons doing work upon fire-guards, particularly the name of each person, the number of days he worked, and the date when and the place where the work was performed; and shall make an abstract thereof, certified under oath, and shall file the same with the township clerk. (Id., § 3146.)

§ **101.** At the regular meeting of the township auditing board thereafter, if the statements of the road overseer are found to be true, the board shall audit the same, and allow to each person who has performed such labor pay therefor at the rate of not to exceed one dollar and fifty cents per day for each person, and three dollars per day for each person and team, and shall draw warrants therefor upon the township treasurer, to be paid out of the general funds of such township. (Id., § 3147.)

GOOD-ROADS LAW.

§ **102.** For the purpose of building and improving public roads and highways under the provisions of this act, the several counties of the state of Kansas having a population of more than eight thousand shall be declared road districts, and the county commissioners may by proclamation submit to the legal voters of their respective counties, at a general election for county and township officers, a proposition to adopt or reject the law to levy a tax of not more than two mills on the dollar, for a period of not less than five years, upon all of the real, personal and mixed property within their respective counties, and upon the ballots shall be printed: "For the good-roads tax levy," "Against the good-roads tax levy," under the provisions of the general election law, and the judges of the election shall count the ballots cast for and against the good-roads tax levy, and make due returns of the same to the county commissioners as other returns are required by law to be made; that said commissioners shall meet within ten days, and, with the clerk of the county, shall proceed to count said votes, and declare the results in a proclamation to be published two weeks in some newspaper in general circulation in the county in which such proclamation is made. If a majority of the votes cast on the good-roads proposition are for such law, they shall declare said law to be in full force and effect, and shall state the day on which the same shall take effect, not longer than two weeks from the date of the election, and from and after such date the provisions of this act shall be in full force and effect. (Gen. Stat. 1901, § 6063.)

§ **103.** Nothing in this act shall be construed so as to extend its provisions to any county until after the election provided for in the preceding section. (Id., § 6064.)

§ **104.** That whenever any county shall fail to cast a majority of

its votes on said proposition for the good-roads tax levy, the county commissioners may annually thereafter submit the same question to the electors of their respective counties, in the same manner as provided in section 1 of this act, and declare the results as herein provided. (Id., § 6065.)

§ **105.** The county commissioners of the several counties of Kansas shall have full and exclusive control of the construction and improvement of all public roads and highways built or improved under the provisions of this act, and they are hereby authorized to purchase all machinery, tools, and materials, employ all labor, superintendence and engineering necessary to construct or improve any such roads or highways, and to pay for the same from the funds provided for under the provisions of this act. (Id., § 6066.)

§ **106.** A majority of the resident property owners of the property abutting on any public road or highway or proposed road or highway in any county within the state may present to the county commissioners of their respective counties a petition setting forth that the petitioners are actual residents and owners within their respective counties, and that they desire such highway or section thereof to be constructed or improved under the provisions of this act. (Id., § 6067.)

§ **107.** Upon presentation of such petition, the board of county commissioners shall investigate and determine whether the road sought to be constructed or improved is of sufficient public character as to come within the purpose of this act; and if the county commissioners shall determine that the highway to be constructed or road to be improved is of sufficient public character to come within the purpose of this act, they shall direct the county surveyor to map the road, both in outline and profile, and to make his report to them as to the kind of material most available for the construction or improvement of said road or highway, and to furnish an estimate of the cost of construction or improvement of such road or highway, and to furnish said county commissioners with certified copies of such maps, plans, and specifications, together with said estimate of the cost, within sixty days from the filing of said petition, and said county surveyor shall be paid a sum therefor not greater than that already allowed by law to the county surveyor for like services. (Id., § 6068.)

§ **108.** Upon receipt of the report of the county surveyor, as provided in section 6, a majority vote of the county commissioners shall adopt a resolution that such public highway shall be constructed or

said public road improved under the provisions of this act as soon as practicable. (Id., § 6069.)

§ **109.** The improved or permanent roadway of all roads or highways constructed or improved under the provisions of this act shall not be less than eight nor more than sixteen feet in width, unless for special reasons, stated by such county surveyor, a greater width shall be necessary. (Id., § 6070.)

§ **110.** For the purpose of defraying the expense of the construction or improvement of said roads and highways, the county commissioners of the several counties are hereby authorized and empowered to levy and collect annually, on all the taxable property of said county, a tax not exceeding two mills on the dollar, and the amounts paid by each township of the tax voted by the county shall be credited to the township paying the same, and set aside and used exclusively for road purposes in that township. The amounts collected from property in incorporated cities and from railroad companies, irrespective of location in said county, shall be credited to a general county road fund, and said fund shall be used: First, in the purchase of all machinery necessary for the economical prosecution of the work contemplated by this act; second, for surveys, maps, and estimates, but no greater sum shall be paid therefor than that allowed by law to the county surveyor for like services; third, the balance of such tax shall be annually divided by the county commissioners between the several townships according to the value of the roads constructed or being constructed or improved under the provisions of this act. (Id., § 6071.)

§ **111.** It shall be the duty of the county commissioners, where the roads have been constructed under the provisions of this act, to apportion to the real estate situated within one-half mile of said road or highways, irrespective of improvements, fifteen per centum of the cost of such improvement.

All acts or parts of acts in conflict with the provisions of this act are hereby repealed. (Id., § 6072.)

TOWNSHIP TRUSTEES TO ENFORCE ROAD LAWS.

§ **112.** The township trustee shall prosecute in the name of his township all violations of the different road laws, or any provisions thereof; and in such prosecution it shall be the duty of the county attorney to act on behalf of the township. (Id., § 7783.)

GENERAL DUTIES, POWERS AND COMPENSATION OF ROAD OVERSEERS.*

§ **113.** The duties of road overseer shall be such as are and may be prescribed by law. (Id., § 7798.)

§ **114.** Each road overseer shall before entering upon the duties of his office execute a bond to the State of Kansas in a sum not less than double the amount of money which will probably come into his hands at any time during his term of office, with two or more sureties, the amount and the sufficiency of the bond to be approved by the township trustee, conditioned for the faithful discharge of the duties of his office, which bond shall be by him forthwith filed in the office of the county clerk. The approval of such bond shall be indorsed thereon by the township trustee. (Id., § 7777.)

§ **115.** It shall be the duty of each and every road overseer to open or cause to be opened all county and state roads and highways which have been or may hereafter be laid out or established through any part of the district assigned to such overseer, first giving notice to the owner or owners, or their agent or agents, if residing in the county, or, if such owner be a minor, idiot, or insane person, then to the guardian of such person, if a resident of the county, through whose inclosed or cultivated lands such road is laid out or established, notifying such owners aforesaid to open said road through their lands within ninety days after service of such notice; and if the person or persons so notified do not open such road within the time named in such notice, it shall be lawful for such overseer or any person under his direction to enter upon said lands and open said road: *Provided*, If such notice be given between the 1st day of March and the 1st day of October, the notice shall designate the 1st day of January next as the time of opening such road. And the overseer shall keep the same in repair, and remove or cause to be removed all obstructions that may be found therein; for which purpose the road overseer is hereby authorized to enter upon any uncultivated land unincumbered by a crop near or adjoining the public road, to dig and carry away any gravel, sand or stone, and to purchase any timber which may be necessary to improve or repair said road, and to enter upon any land adjoining or lying near to said road, to make such drains or ditches through the same as he may deem necessary for the benefit of the roads, doing as little

* The overseer should read all the foregoing statutory provisions, where additional powers and duties will be found which are not repeated under this topic.

damage to said lands as the nature of the case and the public good will permit; and the drains and ditches thus made shall be kept open by the overseer, if necessary, and shall not be obstructed by the owner or occupants of said land or by any other person, under the penalty of being fined not exceeding ten dollars for each offense, before any justice of the peace in the county. The owner of any gravel, sand or stone so taken, or of the land through which ditches or drains may be made, as herein provided, or the owner of the crops thereon, shall be allowed a fair and reasonable compensation for the material so taken or for any injuries his lands or crops may sustain in consequence of the making of said drains or ditches; the same to be allowed and paid by the board of county commissioners of the county in which the road so improved is located. Such claims shall be allowed and paid in the same manner as other ordinary claims against the county, and the claimant shall have the same right of appeal as is now provided by law in other cases. (Id., § 6027.)

§ **116.** That where a road is located on a county or civil township line, and by reason of any impediment, either natural or otherwise, any portion of such road suffers a deflection from such line not exceeding forty rods parallel distance, then for the purpose of improvement such road shall be deemed to be wholly on such line. (Id., § 6050.)

§ **117.** All expenses, either in money, material or labor, arising from the improvement of any portion of such road, shall be borne jointly by the counties or townships contiguous thereto, as the case may be. (Id., § 6051.)

§ **118.** All road overseers shall make full, itemized and sworn reports to the commissioners of roads and highways on the last Monday of April and October in each year, reporting all work done by them, days worked, giving dates of same, of moneys collected by them, how expended, and all information said commissioners of roads and highways may require; and for failure to make said report, or any neglect of duty, said commissioners of roads and highways may discharge such road overseers: *Provided,* That no road overseer shall incur any obligation not authorized by the board. (Id., § 5.)

§ 119. The township auditing board shall annually, on the last Monday of October in each year, settle with and audit the accounts of the township treasurer and of all road overseers in the township, for all moneys disbursed by them; and the township clerk shall record at length such accounts on the township record. (Id., § 7780.)

PART II.

FORMS AND RECORD ENTRIES.

FORMS AND RECORD ENTRIES.

ROAD PETITION.

To the honorable the Board of County Commissioners of the County of.....:

The undersigned respectfully petition your honorable body to lay out, establish and open to public travel in said county a public road, as follows: [Insert a description of the proposed road, giving the beginning, intermediate points, if any, and course, sufficiently full and clear to enable a practical surveyor to run it,] and we respectfully represent that each of us is a householder of said county, residing in the vicinity where said road is proposed to be laid out, and that said road, if so laid out, will be of public utility.

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.....	.....

STATE OF KANSAS,.....COUNTY, ss.

....., one of the above petitioners, being by me first duly sworn, deposes and says that each of the persons whose names are signed to the foregoing petition, including affiant, resides in the vicinity where said road is proposed to be laid out, is of the full age of twenty-one years, and occupies a house in said vicinity, in said county, as a place of residence, and not as a boarder or lodger, and is a householder of said county; and that the signatures to the said petition are the genuine signatures of the said several petitioners, made personally by themselves, respectively.

.....

Subscribed and sworn to before me, this.....day of....., A. D. 19..

[SEAL.] .....

County Clerk.

BOND.

[*Name all the petitioners*] as petitioners, being about to present to the board of county commissioners of the county of....., in the State of Kansas, their certain petition signed by them, praying said board to [establish, alter, vacate, or relocate, as the case may be,] a certain road in said county, described in said petition as follows: [Describe the road.] Now, therefore, we,.....

.....as principal.., and.....

.....as suret.., do hereby bind ourselves firmly by these presents, and do promise to pay to the State of Kansas, for the use of said county of....., the amount of all costs

and expenses that may accrue on or in the proceedings upon and under said petition, in case the proceedings had in pursuance of said petition shall not be finally confirmed and established: *Provided, however*, And this obligation is upon this express condition, to wit: that if the said above-named petitioners shall, in case the said proceedings had in pursuance of said petition shall not be finally confirmed and established, themselves pay into the treasury of the said county of.....the amount of all said costs and expenses when and if the same shall become due and payable by them, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands, this.....day of....., A. D. 19..

.....
.....
.....
.....
.....

This bond is hereby approved by the board of county commissioners of the county of....., in regular session, this.....day of....., A. D. 19..

By order of the Board.

.....
Chairman.

.....
County Clerk.

ORDER UPON PETITION.

Came this day....., principal petitioner therein, and presented to the board of county commissioners a certain petition, which was in words and figures as follows, to wit: [Here copy petition and signatures in full,] and upon examination and consideration thereof the said commissioners do find that the said petition is a legal one; that the signatures thereto are genuine; that the said petitioners whose names are signed to said petition all reside in the vicinity where said road is to be.....; and all are householders of..... county; and that....., one of said petitioners, has duly entered into a bond, with security satisfactory to and approved by said commissioners, payable to the State of Kansas for the use of said.....county, conditioned that the persons signing the said bond shall pay into the treasury of the said county the amount of all costs and expenses accruing on said.....in case the proceedings had in pursuance of said petition shall not be finally confirmed and established; and it is, therefore, by the said board of county commissioners —

Ordered, That the county commissioners act as [*or*, that.....and .....and....., who are disinterested householders of said county, be and they are hereby appointed] viewers of the said road so by said petition prayed to be.....,* and that the county clerk do forthwith notify each of the said viewers in writing of their said appointment, and of when and where they are to meet. And it is further

Ordered, That the county commissioners [*or*, the said viewers] shall meet at [*describing place on line of proposed road where they are to meet*] on the....day of....., 19.., at....o'clock..M., and proceed to the discharge of their duties, and that the county surveyor be and he is hereby ordered and directed to

---

* Omit this if the commissioners are to act as viewers.

L. of C.

meet with them at the said time and place, to survey said road under their direction, and that an order be issued to him to that effect. And it is further

Ordered, That the county clerk, by advertisement set up in his office, and in the township..of.....through which township..... is prayed to be laid out, for at least twenty days, and by publication for two consecutive weeks in the....., a newspaper published in said county, the date of the second publication in said newspaper to be not more than twenty days before the date hereinbefore fixed for said commissioners [*or* viewers] to meet, shall give notice setting forth that said petition has been presented, giving the substance thereof, and that the commissioners [*or* viewers] will, on the day hereinbefore designated, proceed to view said road, and to give all parties a hearing. And it is further

Ordered, That a record of said notice so to be given, and as given, by said county clerk be by him entered upon the journal of the proceedings of this board.

ROAD NOTICE.

To Whom it may Concern:

In pursuance of an order made by the board of county commissioners, in regular session, on the.....day of.....A. D. 19.., notice is hereby given that.....
.....
householders of said county, residing in the vicinity where it is proposed to.....
.....the road below mentioned, have presented to said board their certain petition, praying the.....of a public road, as follows: [Here copy description from petition], and that [the county commissioners].....
and....., viewers duly appointed, will meet at....., on the.....day of....., A. D. 19.., at...o'clock, .. M., and proceed to view said road, and to give all parties a hearing.

Witness my hand, and the seal of said county, affixed at my office in said .....
.....county, this.....day of....., A. D. 19..

[SEAL.] .....

[The clerk should enter a copy of this notice upon the journal.]

NOTIFICATION TO VIEWERS OF APPOINTMENT.

To....., and.....:

You are hereby notified that, by an order of the board of county commissioners of the county of....., made on the .....day of....., A. D. 19.., you were duly appointed viewers to view the following road, which has been petitioned for, to wit: [describe road,] and you were, by said board, ordered to meet at [point fixed,] on the .....day of....., A. D. 19.., at... o'clock .. M., at which time and place the county surveyor will meet with you, and proceed to the discharge of your duties as such viewers.

By order of the board.

Witness my hand, and the seal of said county, this.....day of....., A. D. 19..

[SEAL.] .....

County Clerk.

ORDER TO SURVEYOR TO MEET VIEWERS.

To ....., *County Surveyor of the County of* .....

At a meeting of the board of county commissioners of the county of....., on the.....day of....., A. D. 19...., the county commissioners decided to act as [*or*..... , and....., were appointed] viewers to view a certain proposed road petitioned for, to wit: [describe road,] and they will [*or* said viewers were ordered to] meet for that purpose at [point fixed,] on the.....day of ....., A. D. 19...., at....o'clock .. M., and the said board directed that an order issue to you directing you to meet with them at said time and place. You are therefore directed to meet with said county commissioners [*or* said viewers] at said time and place, and proceed to the discharge of your duties in that regard, as provided by law.

By order of the board.

Witness my hand, and the seal of said county, this.....day of....., A. D. 19...

.....

[SEAL.] *County Clerk.*

NOTICE TO LAND-OWNER OF VIEW.

To.....

You are hereby notified that [principal petitioner] and others, being householders of said county residing in the vicinity of said proposed road, lately presented to the board of county commissioners of the county of....., in the State of Kansas, their petition praying that a road might be established as follows: [describing the road], which road, if established, will run through certain lands in said county owned by you, to wit: [describe his tract generally]; and that at a meeting of said board on the.....day of....., A. D. 19.., the county commissioners of said county decided to act as viewers [*or*, viewers were duly appointed] to view said road, and decided [*or*, were ordered] to meet at [point fixed], on the.....day of ....., A. D. 19.., at....o'clock, ... M., and proceed to the discharge of their duties. You will, therefore, take notice of the meeting and proceedings of said commissioners [*or* viewers].

.....

....., 19.. *One of said Petitioners.*

AFFIDAVIT OF SERVICE.

STATE OF KANSAS,.....COUNTY, SS.

....., being first duly sworn, deposes and says that on the.....day of....., A. D. 19.., he ["delivered personally to ....." *or*, "left for him at his usual place of residence in said county, and with an adult member of his family,"] a notice to the said....., of which the within is a true copy.

Subscribed and sworn to before me, this.....day of....., A. D. 19..

.....

County Clerk.

WAIVER OF NOTICE.

....., as principal petitioner, and others, having petitioned the board of county commissioners of.....county, Kansas, to establish a certain road, as follows: [describe road as in petition,] which proposed

road will run through lands owned by us, or represented by us, respectively, and notice having been published and the county commissioners of said county having decided to act as viewers [*or*, viewers were appointed] under said petition, we, whose names are signed below, hereby waive the service of the written notice required by law to be served by petitioners upon land-owners in such cases.

.....	.....
Guardian of	*Owner of lots 5, 10, 17.*
.....	
.....	.....
.....	*Resident agent of*.....,
Minors,	*Owner of E.½ S. W.¼ 10, 12, 17.*
Owning the N. W.¼, Sec. 12, T. 13, R. 17.	

AFFIDAVIT.

STATE OF KANSAS,.....COUNTY, ss.

....., being by me first duly sworn, deposes and says that the several signatures appended to the foregoing waiver of notice are the genuine signatures of the several persons respectively whose signatures they purport to be, and were affixed by the parties themselves in affiant's presence.

.....

Subscribed and sworn to before me, this.....day of....., A. D. 19..

.....

County Clerk.

LAND-OWNER'S APPLICATION TO VIEWERS.

To County Commissioners of.....*County, acting as Viewers* [*or*,.....
road viewers appointed] to view the road petitioned for by [principal petitioner] and others, beginning [describe beginning of proposed road] and ending..... in.....county in the State of Kansas:

Said proposed road will, if established, run through and upon the following-described premises situate in said county and of which premises I am the owner, to wit: [Here describe the tract, quarter-section or otherwise,] and will cause injury thereto; and I hereby claim damages and compensation accordingly, and hereby apply to you as such viewers to assess, determine and award to me the amount of damages to which I am entitled, and which I hereby allege and claim to be $.....

	.....
.....19..	*Owner of said premises.*

ALIAS ORDER FOR VIEW.

[If the commissioners or viewers fail to meet on the designated day or the next secular day, a new notice must be given, and an order should be made and entered accordingly, fixing a new date and ordering notice as in the first instance. If the commissioners were to act as viewers and failed to meet, they of course know they failed to meet, and the following will be the proper introduction to the journal entry :]

The county commissioners having decided to act as viewers of the proposed road and having failed to meet on the day designated in the order heretofore made and on the following day, it is, by the board,

Ordered, etc. [Here to follow an order like the original for notice, publication,

directing the surveyor to meet with the commissioners, and requiring a record of the notice for the new date, precisely in all respects as in an original order.]

[If viewers have been appointed and they have failed to meet, the order should be:]

And now comes the said....., principal petitioner herein, and shows to the said board of county commissioners that the viewers heretofore appointed to view said proposed road and report thereon did not meet on the day designated by the said board, nor on the following secular day; and thereupon, upon application of the said petitioner, and the said board being satisfied that the said viewers did so fail to meet, it is by said board hereby

Ordered, That the said..... and....., heretofore appointed viewers herein, do meet at [describing place on line of proposed road where they are to meet,] on the..... day of....., A. D. 19.., and proceed to the discharge of their duties; and that the county surveyor be and he is hereby ordered and directed to meet with the said viewers at the said time and place, and survey said proposed road under their direction, and that an order be issued to him to that effect. And it is further

Ordered, That the county clerk, by advertisement set up in his office, and in the townships of..... through which township said proposed road is prayed to be laid out, for at least twenty days, and by publication for two consecutive weeks in the....., a newspaper published in said county, the date of the second publication in said newspaper to be not more than twenty days before the date hereinbefore fixed for said commissioners [*or* viewers] to meet, shall give notice setting forth that said petition has been presented, giving the substance thereof, and that the commissioners [*or* viewers] will, on the day hereinbefore fixed, proceed to view said road, and give all parties a hearing. And it is further

Ordered, That a record of said notice so to be given, and as given by the said county clerk, be entered upon the journal of the proceedings of said board of county commissioners, and the said clerk is hereby ordered and directed to enter the same thereon.

[The clerk will then give notice and make up his record precisely as if a new petition had been presented.]

CERTIFICATE OF VIEWERS IN FAVOR OF ROAD.

The undersigned, the county commissioners of.....county, in the State of Kansas, acting as [*or*, who were by order of the board of county commissioners of.....county, in the State of Kansas, made on the..... day of....., 19.., duly appointed] viewers of a certain road which [naming the petitioners] had by their petition prayed might be established, and which proposed road was described in said petition as follows: [description of road as in petition] duly met with the county surveyor at the beginning of said proposed road, as above described, [or wherever the notice fixed for the place of meeting.] on the.....day of....., 19.., at....o'clock..M., [*if not commissioners*, and each of us having been first duly sworn as such viewers,] and proceeded to view said proposed road, as nearly as prayed for in said petition as a good road can be made at a reasonable expense; [and* caused the county surveyor, under our direction, to survey said road as laid out by us, and to conspicuously mark the same throughout, noting the courses and distances;] and having so done, and having taken

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*Omit this if the county surveyor is not directed to make a survey. See COLLATED ROAD STATUTES, sec. 6.

into consideration the utility, convenience and inconvenience, and expense which will result to individuals, as well as to the public, if such road shall be established and opened, we hereby certify that said road should be established and opened, and that the same is necessary and will be of public utility, and we hereby certify in favor of the establishment of said road for the following reasons:

[These, of course, are but suggestions for assigning reasons.]

First: It is necessary to enable those living in the vicinity thereof to travel to and from the county seat of said county, as witnesses or jurors in courts, or on any private or public business, or for purposes of traffic.

Second: It is necessary to enable the persons living in the vicinity thereof, and who are electors, to travel to and from the place of voting in their precinct.

Third: It is necessary to enable the persons living in the vicinity thereof to travel to and from the postoffice at which they deliver and receive their mails, newspapers, etc.

Fourth: It is necessary to enable the children of the persons living in the vicinity thereof to reach the public school-house of their district.

Fifth: It is necessary to afford John Randolph, living in the vicinity thereof, a means of egress from his farm to the public highway, and without said road he has no means, but by sufferance of his neighbors, of traveling to and from the county seat of said county, to the public school of his district, to the postoffice where his mail is delivered and received, nor to the voting-place of his precinct.

Sixth: Said road will be of public utility, by enabling persons to travel between the county seat of said county and the lands through which said road will run; and because it connects two other public roads with each other, heretofore disconnected in such a way as to deprive many persons of the benefit of either.

Seventh: Because the expense of establishing said road will not be unreasonably large as compared with the convenience and public utility which will result therefrom.

Witness our hands, this.....day of....., A. D. 19...

.....

.....

.....

Viewers as aforesaid, [or County Commissioners.]

CERTIFICATE OF VIEWERS AGAINST ROAD.

[Follow preceding form down to "we hereby certify," and conclude:]

We hereby certify that said road should not be established and opened, and that the same is not necessary, and will not be of public utility; and we hereby report against the establishment of said road, for the following reasons: [Hints as to proper mode of assigning reasons.]

First: Said road is not necessary to enable any person living in the vicinity thereof to reach the county seat of said county, his local postoffice, the public school-house of his district, nor the voting-place of his precinct, nor his nearest town for traffic over a public highway, but said persons can already reach all of said places without any serious delay or inconvenience, by traveling entirely over the public highway already laid out, established and opened to travel; and no person in the vicinity of said road needs it as a means of egress from his land to an established public highway; but every person living in the vicinity of said proposed road already has easy egress from his lands immediately to and upon an already opened and traveled public highway.

Second: While some such road is necessary to the convenience of the people living in the vicinity of the proposed road, and would be of public utility, yet the road as proposed would involve too great an expense to the county to justify its establishment.

Third: That while some such road is necessary to the convenience of the persons living in the vicinity of said proposed road, and would be of public utility, yet this road as proposed will run through [a cemetery or a private burying-ground, or will destroy or needlessly injure a grove, or park, or pleasure-ground,] on the premises of John Hancock, which injury to the owner thereof no mere damages can adequately compensate, while a road could just as conveniently be laid out that would serve the same purpose, and be just as beneficial and of as much public utility, without causing any such injury to any person.

Witness our hands, this.....day of....., A. D. 19..

.....
.....
.....

[If a marker or chain-carriers have been employed, attach to the report the following certificate before the place for signing the report:]

We further certify that, before proceeding with said view and survey, we deemed necessary to take, and did take, to our assistance.....and....., two suitable persons, as chain-carriers, and....., also a suitable person, as marker, and that each of said persons was, under our direction, necessarily and actually employed in said view and survey.....days, for which they are severally entitled to compensation.

SEPARATE CERTIFICATE AS TO ASSESSMENT OF DAMAGES.

[Follow *Certificate of Viewers in Favor of Road* down to "We hereby certify," and proceed:] now file our certificate thereon, and, together therewith, hereby make, file and submit our separate certificate of the damages assessed by us to the land-owners through whose lands said proposed road will run if established; and we hereby certify that we assessed such damages upon all applications made to us in writing, and we submit herewith the written applications upon which said assessments were made by us. We so assessed damages as follows:

	Dolls.	Cts.
In favor of.....	.....	.....
" "	.....	.....
" "	.....	.....
" "	.....	.....
" "	.....	.....
Total damages as assessed.....	.....	.....

Witness our hands, this.....day of....., A. D. 19..

.....
.....
.....

County Commissioners, [or Viewers as aforesaid.]

FINAL ORDER IN FAVOR OF ROAD.

This day the petition of.....
for the establishment of a road as follows: [copy description from petition,] came on to be further heard upon the certified return of the survey thereof, the plat, the certifi-

cate of the county commissioners acting as viewers, [or the viewers,] and their separate certificate of the damages assessed by them; and the said return, plat and reports having all been duly filed with the county clerk heretofore, and having been received by the board of county commissioners, and said board having considered the same, and having concluded that said road should be....., and no legal objection against the same appearing, and the said board being satisfied that said road will be of public utility, it is, by said board of county commissioners

Ordered, That said road, survey and plat be duly recorded; and that said road shall be henceforth considered a public highway. And it is further

Ordered, That the trustees of..... townships, respectively, in which townships said road is located, be and they are severally and respectively ordered and directed to cause said road within their respective townships to be opened for public travel; and that an order to this effect be issued to each of said trustees.

FINAL ORDER AGAINST ROAD.

This day the petition of..... for the establishment of a road as follows: [copy description from petition,] came on to be further heard upon the certified return of the survey thereof, the plat, the certificate of the county commissioners [*or* viewers,] and their separate certificate of the damages assessed by them, and the said return, plat and certificates having all been duly delivered to and filed by the county clerk heretofore, and having been received by the board of county commissioners, and said board having considered the same, and having concluded that such road, as applied for, is unnecessary, it is by the said board of county commissioners

Ordered, That no further proceedings shall be had upon said petition. And it is further

Ordered, That the county clerk do demand and collect of the obligors in the bond given by the principal petitioner herein the full amount of all costs accrued by reason of the view of said road; and upon neglect or refusal of said obligors so to pay, the county clerk shall proceed to collect the said costs by action upon said bond, and when collected, with or without action, the county clerk is ordered to pay said costs into the county treasury of said county.

ORDER TO TOWNSHIP TRUSTEE TO OPEN ROAD.

To....., Trustee of.....Township, in the County of.....:

At a meeting of board of county commissioners, on the.....day of ....., A. D. 19.., the following road, [describe road,] for which ....., principal petitioner, and others, had petitioned, was established; and it was by said board thereupon ordered that an order issue to you as trustee, directing you to cause said road, so far as the same lies in your township, to be opened to public travel: Now, therefore,

You, the said....., as trustee aforesaid, are hereby ordered

and directed to cause the above-described road, so far as it lies in your said township, to be duly opened to public travel.

By order of the board of county commissioners.

Witness my hand, and the seal of said county, this.....day of....., A. D. 19..

.....

[SEAL.] *County Clerk.*

ORDER OF TRUSTEE TO OVERSEER TO OPEN ROAD.

To....., Road Overseer of Road District No.., ...Township:

The board of county commissioners having ordered me, as trustee, to cause the following road, recently established, to wit: [describe road,] so far as it lies in said.....township, to be opened to public travel, you are therefore directed to open to public travel, as provided by law, so much of said road as lies within your district.

....., A. D. 19..

.....

Township Trustee.

OVERSEER'S NOTICE.

To.....:

The road petitioned for by [principal petitioner,] and others, and which runs through a portion of your lands, to wit: [describe the tract of land the party owns, and through which the road runs,] situated in.....township, ...county, Kansas, was on the.....day of....., A. D. 19.., duly established by the board of county commissioners of said..... .....county, and said board has ordered the trustee of said township to cause said road to be opened to public travel. You are therefore notified to open said road through your said lands, as surveyed and marked by the county surveyor of said county, under the direction of the county commissioners acting as [*or the*] viewers of said road, within *ninety days from the service hereof* [*or*, on or before the first day of January next], or it will become my duty to enter, or to depute some one to enter, upon said lands and open said road.

Witness my hand, this.....day of....., A. D. 19...

....., *Road Overseer*

of District No....., of..... Township, ...County.

RECEIPT OR CERTIFICATE FOR MATERIAL TO REPAIR ROADS AND BRIDGES.

STATE OF KANSAS, ...COUNTY, ...TOWNSHIP, ss.

I, the undersigned, road overseer of road district No....., in said township, hereby certify that I did, on the.....day of....., for the purpose of repairing a.....in the road in said district, take away the following-described and valued material belonging to one....., to wit:

Description and quantity of material [give items]:.....

.....

.....

Value thereof: $.....

.....

Road Overseer.

REPORT OF ROAD OVERSEER, TO BE MADE ON THE LAST MONDAY IN APRIL AND THE LAST MONDAY IN OCTOBER, EACH YEAR.

To the Commissioners of Roads and Highways of.....
Township of.....*County, Kansas:*

REPORT OF....., AS ROAD OVERSEER OF.....DISTRICT IN SAID TOWNSHIP.

I,..... ....., the said Road Overseer, report, that since the date of my last report, to wit,....., I have, as such overseer, done work as shown by the dates given below; that I have collected and expended money as shown below; and I hereby certify that in the following report I have correctly given all other information you have required of me.

Work Performed by Me.

Days worked.....
Dates of work:

January.....	July.....
February.....	August.....
March.....	September.....
April	October.....
May.....	November.....
June.....	December.....

Due for above, - - - - - - - - - $.....

Moneys Collected.

Date.	Source.	For What.	Amount.

How Expended.

Date.	To Whom.	For What.	Amount.

Other Information Required by Board.

.....
.....

State of Kansas,.....County, *ss.*

I,....., Road Overseer for the .....District of.....Township, of .....County, Kansas, being duly sworn, depose and say that the foregoing is a full, itemized report of all work done by me since my last report, to wit, since....., 190.., with the dates of said work, and of all moneys collected by me and how expended; and contains all information otherwise required of me by the Board of Commissioners of Roads and Highways of said township, correctly stated and set forth.

.....

Subscribed and sworn to before me, this.....day of....., 19...

.....
.....

AUG 21 1905

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